TO THE ZONING COMMISSIONER OF PALITIMORE COUNTY:

13 packing spaces in lieu of the required 25 spaces

Add 305 W. Chesapeake Avenue
Towson, Maryland 21204

Eva Macris

I, or we Sarandos (Sam) Macris and legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 238.2 to permit a rear yard setback of 0 feet in lieu of the required 30 feet; and Section 109.2 to allow

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

that the constraints imposed by the setback requirements severely limit the feasibility of constructing a commercial building on petitioner's parcel of property which would allow petitioner to MAP. use said parcel of property for retail purposes.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this y: petition, and further agree to and are to be bound by the zoning regulations and restrictions of Balintore County adopted pursuant to the Zoning Law For Baltimore County. Contract purchaser Address 1742 E. Joppa Road Baltimore, Maryland 21234 Steinberg, Lichter, Coleman & Rogers Protestant's Attorney

of___November____, 197 2, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore 19 x 80 at 9:45 o'clock

County, on the 12th day of February __A__M.

ORDERED By The Zoning Commissioner of Baltimore County, this_____28th___

Section 1B01.1.B.1.a.1 - "A residential transition area is any D.R.1, D.R.2, D.R.3.5, D.R.5.5, or D.R.10.5 zone or part thereof which lies (a) within 300 feet of any point on a dwelling other than an apartment building, or (b) within 250 feet of any point lying within a vacant lot of record which is itself wholly or partially classified as D.R. and which is two acres or less in area."

Section 1B01.1.B.1.a.2 - "A residential transition use is any one of the uses listed as such in the following table and hereby classified as set forth therein: " (table referred to incorporated herein as if fully set forth)

Section 1B01.1.B.1.b - "Restrictions in Residential Transition Areas. In any residential transition area situated as described in the following table, only residential transition uses shall be permitted, and only as indicated:" (table referred to incorporated herein as if fully set forth)

While it is true that the transition area, as defined above, does not affect the portion of the Petitioners' property lying within the B.R. Zone, it does affect that portion of the Petitioners' property lying within the D.R.5.5 Zone. Therefore, both the uses allowed in the "transition area" (see tables for Sections 1B01.1.B.1.a.2 and 1B01.1.B.1.b) and the requirements for "parking spaces" (see Section 409.2) becomes germaine to the Petition for Special Hearing to approve "an access drive within a parcel of property zoned D.R.5.5" and that portion of the Petition for Variances "to allow thirteen parking spaces in

lieu of the required twenty-five spaces". In referring to the aforementioned tables, with application to the access, the three hundred square foot requirement, which includes access aisles, for a parking space, and the site plan referred to as Petitioners' Exhibit 1, it is aparent that neither access to a commercial use nor parking spaces required therefor come within the purview of those above referred to tables of uses with n the "transition area". Therefore, in view of this conclusion, an access drive through D.R.5.5 zoned property and the variance to allow thirteen parkng spaces in lieu of the required twenty-five spaces (the maximum provided on the site plan being ten that comply with the three hundred square foot require-

- 2 -

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Sarandos (Sam) Macris and legal owners of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing Under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an access drive within a parcel of property zoned D.R. 5.5

Property is to be posted and advertised as prescribed by Zoning I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

------Contract Purchaser Address July Jelly

Address 1742 E. Joppa Road Baltimore, Maryland 21234

Eva Macris Sarandos (Sam) Macris Julian Legal Owner

Protestant's Attorney

Julius W. Lichter

Petitioner's Attorney
Steinberg, Lichter, Coleman & Rogers Address 305 W. Chesapeake Avenue
Towson, Maryland 21204

ORDERED By the Zoning Commissioner of Baltimore County, this 28th day of November ,19679, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____day of _February ___19680_, at 9:45_o'clock_4.__M.

Zoning Commissioner of Baltimore County

tion 238.2 of the Zoning Regulations.

The Petition for Variances also includes a request to permit a rear

After reviewing the testimony and exhibits offered, the nearest improve-

yard setback of zero feet in lieu of the required thirty feet as set forth in Sec-

ment to be affected by the requested rear yard variance would be on the west

side of the subject site which contains a one-story brick and frame structure

containing an antique store and militaria shop. The nearest point of the an-

tique store, to what is depicted on the site plan (Petitioners' Exhibit 1) as the

rear lot line for the subject site, is eight feet. There was no protest devel-

oped for this requested variance, either by those Protestants in attendance or

by the owners or operators of the antique store, except insofar as the protest

relates to the proposed "carry-out" food business generating an increase in

reduction of the required parking spaces reflects upon the Petitioners' pro-

posed use in accordance with the site plan filed, a zero foot rear yard setback

would answer the practical difficulty or unreasonable hardship experienced by

the Petitioners in the utilization of this B.R. zoned property and would not be

of sufficient or substantial injury to the public health, safety, and general wel-

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore

Although the denial of the access through D.R. zoned property and the

traffic on both Joppa Road and Lackawanna Avenue.

fare of the community.

FOR

RECEIVED

Lackawanna Ave., 9th District

NW corner of Joppa Rd. and

RE: PETITION FOR VARIANCES

PETITION FOR SPECIAL HEARING

and the state of the same

BEFORE THE ZONING COMMISSIONER

OF BALTIMORE COUNTY

SARANDOS (SAM) MACRIS, et ux,

Case No. 80-150-ASPH

::::::

ORDER TO ENTER APPEARANCE

Mr. Commissioner:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefore, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman Deputy People's Counsel

John W. Hessian, III People's Counsel for Baltimore County County Office Building Towson, Maryland 21204 494-2188

I HEREBY CERTIFY that on this 21st day of January, 1980, a copy of the aforegoing Order was mailed to Julius W. Lichter, Esquire, Steinberg, Lichter, Coleman & Rogers, 305 W. Chesapeake Avenue, Towson, Maryland 21204, Attorney for Petitioners.

John W. Hessian, III

It is FURTHER ORDERED that an access drive through D.R.5.5 zoned

Zoning Commissioner of

Baltimore County

property to serve a B.R. Zone permitted use, as requested in the herein Pe-

tition for Special Hearing, be and the same is hereby DENIED.

RE: PETITIONS FOR VARIANCES AND SPECIAL HEARING

NO. 80-150-ASPH (Item No. 69)

E25 B HE ZONING COMMISSIONER

NW/corner of Joppa Road and Lacka-: wanna Avenue - 9th Election District Sarandos Macris, et ux - Petitioners:

BALTIMORE COUNTY

This matter comes before the Zoning Commissioner as the result of a Petition for Special Hearing requesting approval of an access drive through D.R.5.5 zoned property to serve a B.R. Zone permitted use and a Petition for Variances to permit a rear yard setback of zero feet in lieu of the required thirty feet and thirteen parking spaces in lieu of the required twentyfive spaces.

On the east, west, and south sides of the subject site, the properties are zoned B.R. On the north side of the subject site, the property is zoned D.R. 5.5. The D.R. 5.5 Zone line passes through the subject site in order to provide 0.19+ of an acre for the B.R. uses and to devote 0.12+ of an acre to the D.R.5.5 uses. Both the testimony and the site plan prepared by Hudkins Associates, Inc., dated September 7, 1979, and marked Petitioners' Exhibit 1, indicate two existing dwellings would be razed to accommodate the proposed improvements for a "carry-out" food business. The testimony further indicates that the access point for this commercial enterprise would be on Lackawanna Avenue through that portion of the subject site lying within the D.R.5.5 Ezoned property with the parking spaces indicated as being located within the B.R. zoned property.

In an attempt to arrive at a conclusion with respect to the access drive through the D.R.5.5 zoned property, as well as the parking area bordering the D.R.5.5 Zone with the actual spaces being laid out in the B.R. Zone, there are several sections of the Baltimore County Zoning Regulations which become pertinent and are set forth as follows:

FOR

BA! IMORE COUNTY, MARY! IND

INTER-OFFICE CORRESPONDENCE

Mr. W. E. Hammond Zoning Commissioner John D. Se/ffart, Director

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January 22, 1980

Office of Planning and Zoning

Petition No. 80-150-ASpH 11em 69

Petition for Variance for rear yard setback and parking and Special Hearing for an access drive Northwest corner of Joppa Road and Lackawanna Avenue Petitioner – Sarandos (Sam) Macris, et ux

9th DISTRICT

HEARING: Tuesday, February 12, 1930 (9:45A.M.)

If granted, it is requested that the petitioner be required to provide a detailed lundscaping plan and obtain approval from the Division of Current Planning and Development.

Office of Planning and Zoning

JDS:JGH:acb

day of June, 1980, that the variance to permit a rear Pard setback of zero feet in lieu of the required thirty feet should be and the ame is GRANTED, from and after the date of this Order, subject, however, no the approval of a site plan by the Department of Public Works and the Office Planning and Zoning. It is FURTHER ORDERED that the variance to allow thirteen parking spaces in lieu of the required twenty-five spaces be and the same is hereby

- 3 -

SEP 29 1290

ment) should not be granted

SUBJECT Sarandos A. Macris - #80-150-ASPH (Item 69)

John W. Hessian, III

People's Counsel

This case is presently being considered by you after hearing and I understand that the issue of whether one may use residentially zoned property for an access route to commercial property is an element in the case. I have photostated and enclose three pages from "American Law of Zoning," by Anderson, Section 9.27, which treats this question and I have also photostated and enclose the opinion in Liembach Construction Company v. City of Baltimore, 257 Md. 635, 264 A.2d 109 (photostat from Atlantic), which is apparently the definitive Maryland case.

> Dolen W. Derin Fr John W. Hessian, III People's Counsel

Enclosures

cc: Julius W. Lichter, Esquire 305 West Chesapeake Avenue Towson, Maryland 21204

AMERICAN LAW OF ZONING

even though they have some residential characteristics. A boardinghouse, for example, may be excluded.48 Hotels are commercial, rather than residential, e tablishments, and may be excluded." Where lodging houses and hotels are permitted in a residential district, a property owner is not in violation if he operates a guesthouse where groups stay for extended periods of time or under continuous arrangements."

The power to exclude commercial uses from residential zones includes the authority to control the location of such uses within buildings in such zones. Thus, an ordinance is valid which confines certain office uses to the ground floor of multiple dwellings.46

The question whether an exclusion of commercial uses prohibits the use of residential land to provide ingress and egress for a commercial establishment,47 and the issues relating to accessory uses, will be considered in subsequent sections.48

§ 9.27. -Exclusion of access routes.

An ordinance excluding commercial uses from a residential district excludes the maintenance of driveways which provide ingress and egress from such uses." This problem frequently

apartment houses. Miami Beach v

Arthree, Inc. 269 So 2d 699 (1972, Fla

49. Yonkers v Rentways, Inc 304

NY 499, 109 NE2d 597 (1952).

43. Baddour v Long Beach, 279 NY plaintiffs were properly denied relief 167, 18 NE2d 18, 124 ALR 1003 since the court established that (1938), reh den 279 NY 794, 19 NE2d viewed on the basis of the existing 90, 124 ALR 1010, app dismd 308 NY structure rather than the presently existing use of the edifice, plaintiffs' 503, 84 L Ed 431, 60 S Ct 77.

44. Goodhue v Pennell, 164 App Div 821, 150 NYS 435 (1914). was a reasonable relationship be-45. Selvetti v Building Inspector of tween the public welfare and an ordi-Revere, 356 Mass 720, 249 NE2d 744 nance prohibiting service stores in

46. People v 960 Park Ave. Corp. 286 App Div 493, 145 NYS2d 190 (1955), affd 1 NY2d 771, 153 NYS2d 46, 135 NE2d 585.

In an action by plaintifi-owners of an apartment-hotel seeking a declaratory judgment that a zening ordinance was unconstitutional where the effect of such ordinance would be to The construction of a driveway at 3 prevent said apartment-hotel from culvert across the corner of a realizamaintaining service stores and offices tial lot so as to permit 2 to 10 tro 41 such as were permitted in hotels of daily to enter the applicant's or every similar size in neighboring locations, cial property would constitute av in-

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actual place the cours. argy v Pu 1-4 80 102 8 ...n Set Pro 1 m 210 A 31 (2)

Same & Land

tags v Prime America Corp. 229 Ga NE2d 361 (1967) 430, 192 SE2d 147 (1972). Inc. 210 A2d 656 (1965, RD.

TYPES OF ZONING REGULATION

when a shopping center or supermarket is established on

and a facent to a residential district. Such uses need parking

1/2 e and convenient access which sometimes is available only if

the driveway can be routed through a residential district. Com-

menting on the validity of a proposed 45-foot driveway from a

"The use of land in a residence district as a means of

ingress and egress to land or buildings in a commercial zone

for commercial purposes constitutes a commercial use in

violation of zoning restrictions in a residence district."56

Some municipalities have softened the exclusion by permitting

access routes through some, but not all, residential districts.

Where such a compromise is effected by ordinance, a commercial

or industrial user may not be permitted to establish an access

route through districts not included among those excepted from

the usual exclusionary rule. Exceptions to the general rule

have been made where the proposed route was already classified

as a public road by force of statute, 22 and where the land in issue

The same access problem has arisen where a multiple-dwelling

use sought to establish access through a more restrictive residen-

tial zone. A Connecticut court held that a proposed 60-foot

driveway to be constructed across a single-family district, to

provide an access route for an apartment complex, would violate

the use restrictions of the district.54 However, an Illinois court

store to a public street, a Rhode Island court said:

was too small to accommodate a residential use.53

permissible "business" use of residen- 52. Mahnke v Coughenour, 170 Colo tial property. Leimbach Constr. Co. v 61, 458 P2d 747 (1969). Baltimore, 257 Md 635, 264 A2d 109

53. Where en orcement of residen-Where an ordinance prohibits ac- tial zoning of a strip concededly too cess through a residential lot to a small to support a residential use commercial lot, the mere possibility of would bar the only access to landownsuch access in a split lot will not be er's adjacent business property, a vargrounds to deny a building permit if lance should have been granted by actual plans show access only through the zoning board. Lapenus v Zoning the commercial part of the lot. Stall- Board of Appeals, 352 Mass 539, 226

54. Park Constr. Co. v Planning & 50. Providence v First Nat. Stores, Zoning Board of Appeals, 142 Conn 30, 110 A2d 614 (1954). 31. Gerdon v Zoning Board of Stam- Owners of an apartment in a com-145 Conn 597, 145 A2d 746 mercial zone sought to use an adjoin-

ing lot zoned residential for a drive-

AMERICAN LAW OF ZONING

held that an ordinarce limiting land to single-family use is not violated by a driveway which provides access to a multiple residence located in another district.55

§ 9.28. —Accessory uses.

Zoning ordinances which establish residential districts usually permit accessory uses. A representative provision authorizes

"Accessory residential uses and structures, clearly incidental to the permitted principal use, including servants quarters, guest houses and bomb shelters, excluding accessory dwellings of other types."56

Many ordinances are less specific, providing simply for accessory uses, or accessory uses and accessory buildings. A definition of "accessory use" may be included, as, for example:

"Accessory building and use—A subordinate building located on the same lot with the main building, or subordinate use of land, either of which is customarily incident to the main building or to the principal use of land."57

The courts, as well as the municipal legislative bodies, have recognized that if the centrol of land use is to be workable, it must permit uses collateral to the main uses of land. A New Jersey court said:

"Use by a family of a home under our customs includes

way for ingress and egress. The court recreation or education. Even though held that under the ordinance the it is unusual it is permissible unless proposed use was not permitted, ei- specifically excluded by a zoning resother expressly or by implication. Will lution. Dettmar v County Board of liams v Bloomington, 108 III App 2d Zoning Appeals, 28 Ohio Misc 35, 57 307, 247 NE2d 446 (1969). Ohio Ops 2d 17, 273 NE2d 921 (1971). 55. People ex rel. First Nat. Bank v. A township ordinance applicable to Deerfield, 50 III App 2d 549, 200 accessory uses in single family residential districts required such uses to NE2d 120 (1964). be subordinate to the principle use of 56. Charlotte, N. C., Zoning Ordiland or building or other structure on nance §§ 23-31 (1973). a lot. A vacant dwelling house unoc-57. Little Rock, Ark, Zoning Ordi- cupied for sometime could not constinance § 43-1(1) (1973). "Uses customarily incident to single entitle applicant to repair and store family dwellings" means the class of his truck and trailer on the property activity a family customarily does in as an accessory use to the use of the or about the home and does not limit - dwelling house within the meaning of the activity to those identical uses said ordinance. Sojtori v Douglass

tute a principle use of property to

chosen by their neighbors as long as Township Board of Supervisors, 6 Fa the activity is a form of family hobby. Cmwlth 552, 296 A2d 532 (1972)

LEIMBACH CONST. CO. v. CITY OF BALTIMORE Md. 109 Cite ## 266 A.24 100 2.7 Md. 035 Charles C. W. Atwater, Baltimore (My-. . . WRACH CONSTRUCTION COMPANY lander & Atwater, Biltimore, on the brief)

Mayor and CITY Council OF Simon Schonfield, Asst. City Sol. BALTIMORE et al. (George L. Russell, Jr., City Sol., and No. 271. Clayton A. Dietrich, Chief Asst. Sol., Baltimore, on the brief) for Mayor and City Court of Appeals of Maryland, Council part of appellees.

April 13, 1970.

and culvert across corner of residential lot.

The Baltimore City Court, Anselm Sodaro,

Where property owner could accom-

plish access to his property on foot or on

and publication Words and Phrases

the organ judicial constructions and

Affirmed.

1. Zoning @=417

7. Zaning ⇔280

et een be tial district.

the transfer of the contract o

Marvin M. Polikoff, Baltimore, for Bettie O. Summers, other appellee. Appeal from decision of Board of Mu-Argued before HAMMOND, C. J., and nicipal and Zoning Appeals disapproving McWILLIAMS, SINGLEY, SMITH and application for permit to install driveway DIGGES, JJ.

McWILLIAMS, Judge.

1., affirmed action of the Board and appeal The boundaries of the triangular enclave was taken. The Court of Appeals, Mc- within which lies the land of the appellant Williams, J., held that construction of (Litty) are Wilkens Avenue on the south, driveway and culvert across corner of resi- Caton Avenue on the east and the Pennsyldential lot so as to permit two to ten vania Railroad on the northwest. On the trucks daily to enter applicant's commercial opposite side of Wilkens Avenue are the property would constitute impermissible spacious grounds of St. Agnes Hospital, "business" use of land in residential dis- On the other side of the railroad is London Park Cemetery. Maiden Choice Run flows through the enclave, from west to east. continuing to its confluence with Gwynn's Falls, a half mile or so farther east. An occasional reference to the accompanying plat will facilitate comprehension of the

horseback, fact that he could not drive motor vehicle onto his property did not render his present place of business. Sometime action of Board of Zoning and Zoning Ap- prior to March 1969 he acquired an option peals in refusing to permit construction of to purchase the three acres of commercialdriveway and culvert in residential area ly zoned property designated Lot 10 and Lot 21 on the plat. Although legal access thereto is provided by Primson Avenue, vehicular access is, in fact, impossible be-Construction of driveway and culvert cause the bridge over Maiden Choice Run actives corner of residential lot so as to fell down fifteen, "maybe even forty" Herrait two to ten trucks daily to enter ap- years ago. It seems that city officials dis-Frant's commercial property would consti- played a massive indifference to Litty's suggestion that the bridge be rebuilt inspired, no doubt, by an estimated cost of \$50,000 to \$55,000. There were vague mutterings about splitting the cost but Lit-

ty had a notion that a crossing could be ac-

" 6 may I fine the perculent and apparently the principal owner of the appellant, Leim-

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110 Md. 264 ATLANTIC REPORTER, 2d SERIES

The first of the control of the cont

complished at a point about 100 feet southwest of Primson Avenue for about \$12,000. He thereupon obtained an option to buy the irregularly shaped one acre of residentially zoned land designated P on the plat. He had in mind building a 30 foot driveway from Primson Avenue across the easterumost panhandle thereof and thence over a bridge to Lots 10 and 21. On 19 March 1969 Litty applied for a

permit to "install [a] driveway and culvert across [the] corner of [the residential] lot." The application was disapproved by the zoning commissioner "for the reason that it violates [Section 11 of] the zoning ordinance." The 1 and of Municipal and Zoning Appeals took up Litty's appeal on 15 April. Bettie Owings Summers, the chairman of the St. Agnes Neighborhood Association, testified that of the !27 householders in the community at least 113 opposed Litty's application. She spoke, with obvious relish, of the defeat of an earlier (1960) attempt to rezone Lot P from residential to commercial. She expressed Litty's appeal from the decision of the fears that Litty's tractor-trailer trucks, two Board came on for a hearing, before Sodato ten daily, would create a traffic hazard ro, J., in the Baltimore City Court, on 11 and be an "additional nuisance." Litty tes- June. Miss Summers testified there was a tified that he proposed to spend \$3(0,000 to time when there were a few houses on Lot \$400,000 improving Lots 10 and 21. Some 21 access to which was by "a foot bridge mention was made of pedestrian access to across Maiden Choice Run * * * the cemetery through a tunnel under the [which was] never wide enough for any

The Board found that the "testimony that there was no access to the property, shows that the only access to Lot[s] 21

His revelation that he had exercised the and 10 * is on Primson Avenue." Options to purchase Lots 10, 21 and P in It noted that "the operation of the [proposed] business would necessitate ny- something of a surprise to the court and where from two to ten trucks daily entering the area and that these trucks would be significance. The consideration for Lote of the tractor-trailer type." It noted also that the opposition of the St. Agnes Neighborhood Association was based on a claim. In affirming the action of the Board, that the proposed use "would be an en- Judge Sodaro said: croachment to the residential character of the neighborhood." The Board's resolution, dated 18 April, goes on to cay:

"The premises is vacant land on which olation of the Zonn & Ordnerse The it is proposed to construct a 30 foot. Appellant contends that Sections 1 and

に通信の対象に対象を受ける。 の対象に対象に対象に対象が、対象が表現を対象が表現を対象が表現を対象を表現を表現を表現しています。 の対象に対象に対象が、対象が表現を対象が、対象が表現を表現を表現を表現を表現しません。 こうしゅうしゃ かっぱん はいまかん (本) はいまかん (本)

driveway and metal culvert for ingress and egress to the adjoining commercial

"Under the provisions of Sections 10 and 11 of the Zoning Ordinance, a business and a yard for the storage of motor vehicles are uses excluded from the Residential Use District. The proposal in this case is to construct a driveway and culvert and use that portion of the lot for ingress and egress to the commercially zoned property."

• • • • • • • "The Board is of the opinion that no sufficient reason was shown to make an exception to the use regulations as preposed in this appeal. The Board also finds that the proposal would be detrimental to the health, safety and welfare of the community.

"In accordance with the above facts and findings, the Board disapproves the

railroad which it seems is on a 30 foot vehicle to go across." Litty's testimony befill. Lots 10 and 21 were described as a fore Judge Sodaro was brief. He said, as "mess," a "jungle" and a "wilderness." he did at the hearing before the Board, P, \$12,900.

> "The court is of the opinion that the proposed driveway would be a commer-

for ingress Commercial sections 10 of division end motor land in each zone classification. There and 21.

(a) no land or building shall be used;

(3) Professional offices, except as

As provided approximate to be seen the second of the second approximation and the second approximation

Section 10 prohibits the use of land in a

residential district for "business" and for

storage yards for building or structural

.

(2) Business offices

provided in section 12."

"aterials or equipment."

property in tion appear : 🛊 nance or by n that no tention is wo make an is really nothing left for interpretation, of the pert s as pro-. . . " nance provid oard also scribed in the be detriland in each d welfare

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cept that is on Lot (a) no land, [for] . (1) Uses e: said, as and Office U. . Board, (2) Busines: property. (3) Professi fised the provided in sec and P in Section 10 prohibit ourt and residential district "storage yards for for Lots materials or equipme for Lot [1] As Litty con to have considered . Board, here presented; nor,

courts of our sister st that the the appellee (the City co metfor of cases but they of man ther with different kin e The the the properties in 18 10 and and secres requiring go troin whether the el wratif to The well stay to a stay stay.

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LETMENCE C (ST CO + CITY OF BALTIMORE MA 111

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1 16 44 164 4 25 1 W and the first of the care edge fortiers is we think, that Intry's legal across to Lots was are at the one of the driveway. 10 and 21 is Ly way of Pranson Avenue. That he can't drive a motor vehicle onto the property is quite beside the point. Acand should not be applied to cess can be accomplished on foot or on source with the seneficial use of the horselnek; materials can be fetched by 31 , etty in question unless the restric- pack-train. A bridge would be far more the expeats on the face of the Ordi- convenient, of course, and, in the long run, case or by clear implication. This con- much less expensive. But this is cone of the season without merit. The largeage our concern and what is somewhat more of the pertinent sections of the Ordis to the point, Litty knew the circumstances nance provides that only the uses pre- when he exercise I his options and commitscribed in the Ordinance may be made of ted his company to the purchase of Lots 10

[2] The question then is not whether the action of the Board amounts to confiscation but simply whether the proposed use Section II of the zoning ordinance, Bal- of Lot P is prohibited by the ordinance. timore City Code, Art. 30 (1966), is as fol- We agree with Judge Sodaro that the use Litty proposes to make of the driveway "In a Residential Use District, no use shown in the plat would be a "business"

of land or building shall be excluded, ex-There is about this case a faint bouquet suggesting that Litty may be the victim of

a little hanky-panky. We can understand (1) Uses excluded from Residential the desire of the residents to preserve the and Office Use Districts [Section 10] insularity of their little quarter. To be able to thwart any use of Lots 10, 21 and P innres to their benefit, providing them, in effect, with a jark or a playground at no expense to them or to the City. And in this, thus far at least, they have been successful. The City, on the other hand, having created value in the land by classifying it for commercial use, derives tax [1] As Litty concedes, we seem never revenues from it without having to provide " have considered the precise question much, if anything, in the way of service. Presented; nor, we are told, have the But Litty is entitled to enjoy any of the of our sister states. Both Litty and uses for which the land has been zoned stiellee (the City) have cited a num- and if his proposed use is neither prohibitof cases but they all seem to deal ei- ed nor unreasonable he ought not to be * in different kinds of ordinances or frustrated by a dog in the manger attitude 1 1 serves in question were with- on the part of the City and the neighbornot a real regarder of the hood in respect of the bridge and the passome of a few trucks each day over Primthe confiscatory, of son Avenue. As we see a there is no reaone we der dief be apple - son why Litty and theil ity should not be the community of the control of the artist at a most ally satisfactory arto the control of the strate of the strate of the strate pro264 ATLANTIC REPORTER, 2d SERIES

Concern the magnetic department of the control of t

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vided negotiations looking to such an ar- scrutiny by the courts to see if there is any rangement are undertaken in the utmost lack of good faith. good faith. All concerned should understand that any litigation which may devel-Affirmed.

op in the future will be subject to careful . Costs to be paid by appellant.

Carlo di de la calculation de la calculation de des des respectivos de la productiva de la calculation de la calculation

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W. W. S. C.

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SEP 23 890

PETITION FOR VARIANCE AND SPECIAL HEARING 9th DISTRICT

ZONING: Petition for Varian or rear yard setback and parking and Special Hearing for an access drive
LOCATION: North 'e't corner of Joppa Road and Lackawanna Avenue
DATE & TIME: Tuesday, February 12, 1980 at 9:45 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Raltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variances to permit a rear yard setback of 0 feet in lieu of the required 30 feet and to allow 13 parking spaces in lieu of the required 25 spaces and Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the 7 ming Commissioner and/or Deputy Zo. g Commissioner and/or Deputy Zo. g Commissioner should approve an access drive within a parcel of property zoned D.R. 5.5

The Zoning Regulation to be excepted as follows:
Section 238.2—side and rear yard setbacks

Section 469.2—Parking space

All that parcel of land in the Ninth District of Baltimore County Beginning for the same at a point on the west side of Lackawanna Ave. (40 feet wide) said point being distant from the point formed by the intersection of the center of Lackawanna Avenue with the center of Joppa Road the two following courses and distances viz: (1) North 20 degrees 55 minutes 45 seconds

West 61 feet and (2) South 69 degrees 04 minutes 15 seconds West 20 feet thence North 20 degrees 55 minutes 46 seconds West 152 feet thence South 69 degrees 04 minutes 15 seconds East 179 feet thence, North 68 degrees 30 minutes 20 seconds East 42.17 feet thence North 23 degrees 46 minutes 17 seconds East 35.53 feet to the place of beginning.

Containing 0.31 Acres of land more or less.

Being 11-e property of Sarandos (Sam) Me ris, et ux, as shown on plat plan filed with the Zoning Department

Hearing Date: Tuesday, February 12, 1980 at 9:45 A.M.

Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

By Order of:

WILLIAM E. HAMMOND,

Zoning Commissioner

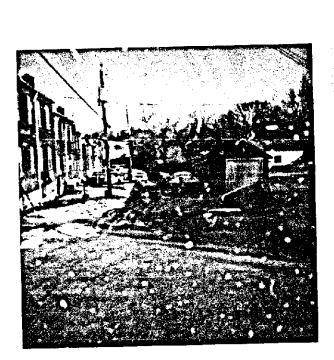
of Baltimore County

DUPLICATE CERTIFICATE OF PUPLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baitimore County, Md., once in eachof one till successive weeks before the 1944 day of Former, 19_20, the first publication appearing on the __2L22___day of ________ 198.....

> THE JEFFERSONIAN, Leank Structure Manager.

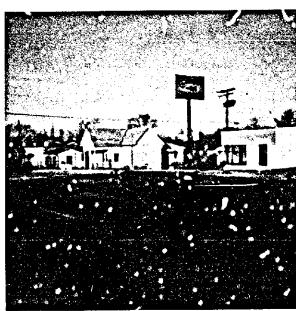
Cost of Advertisement, \$ 28°-

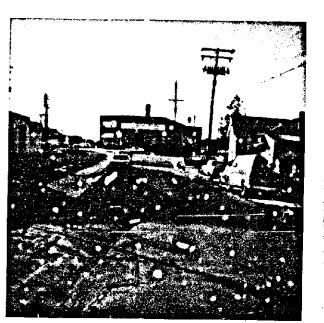










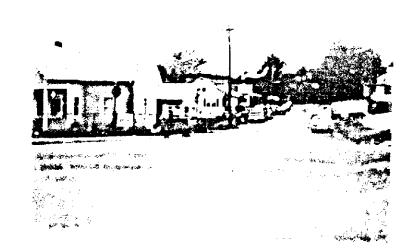


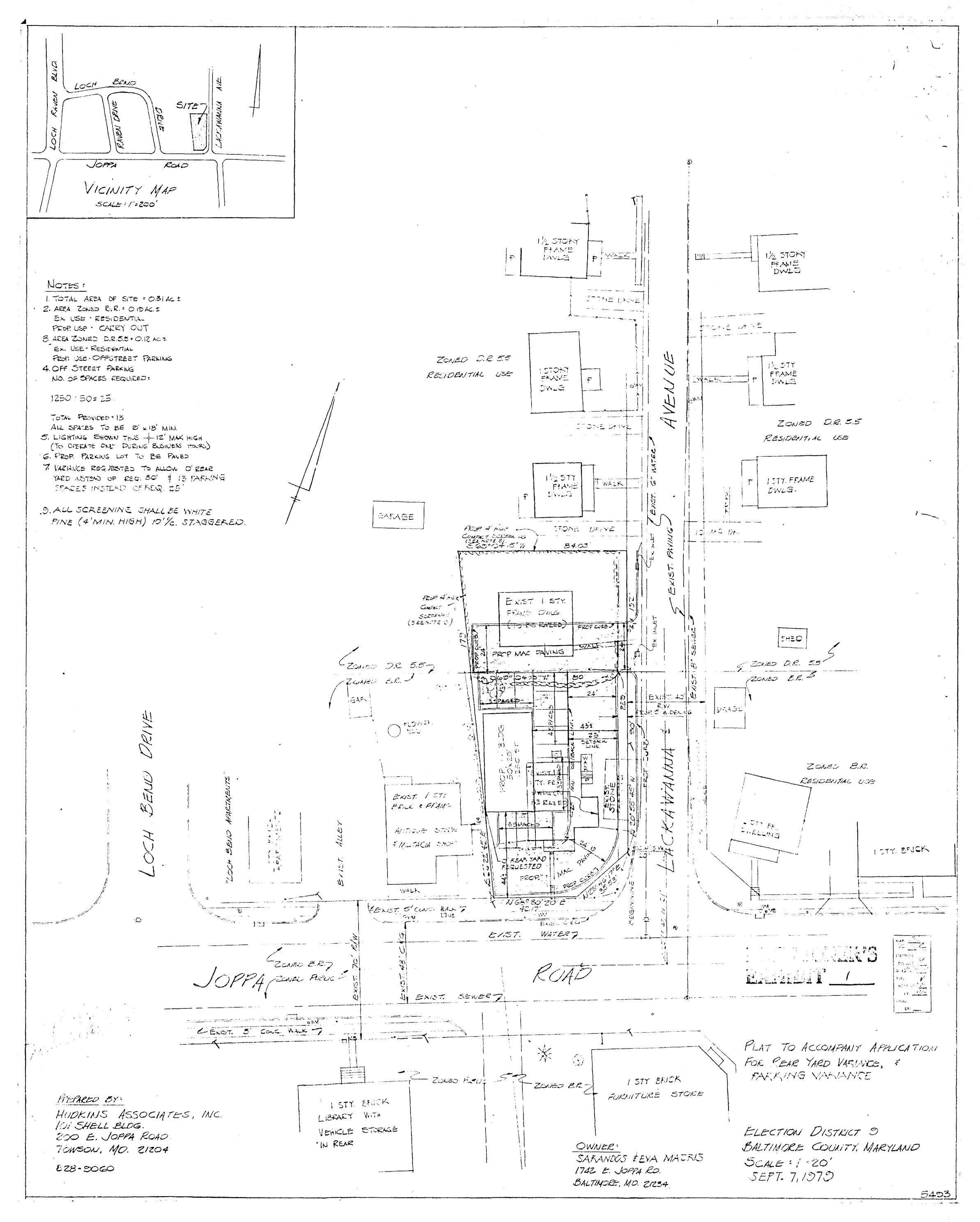


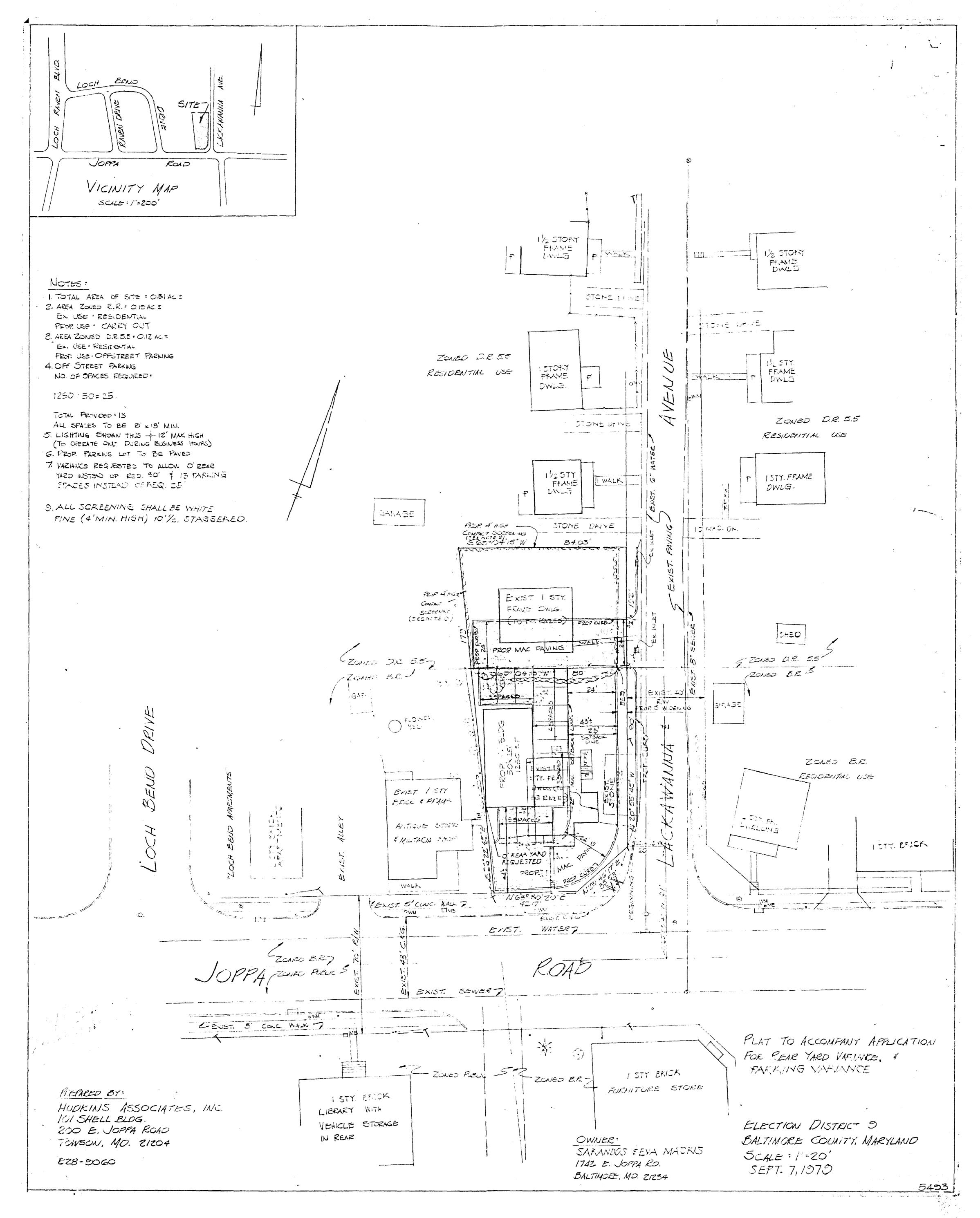


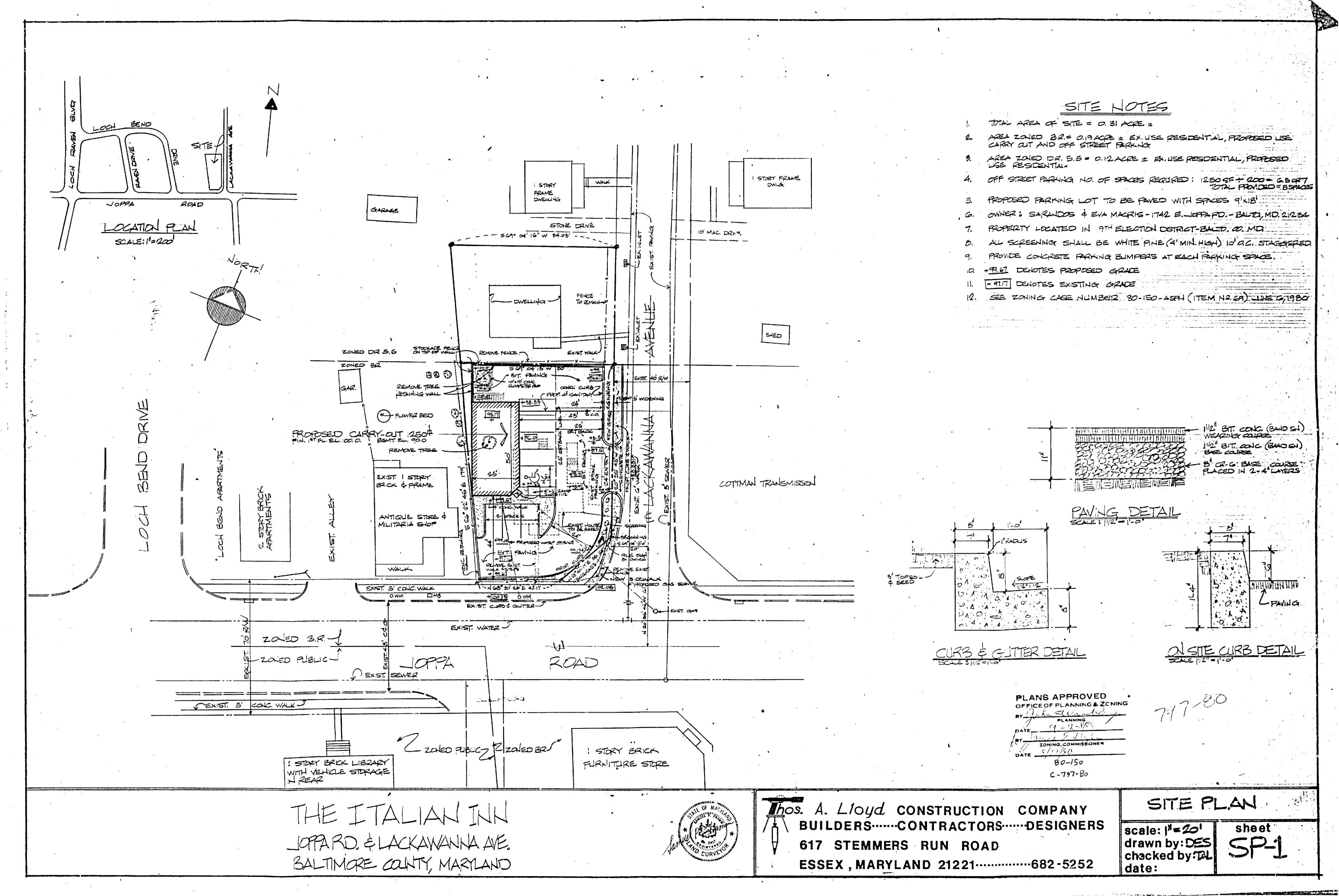
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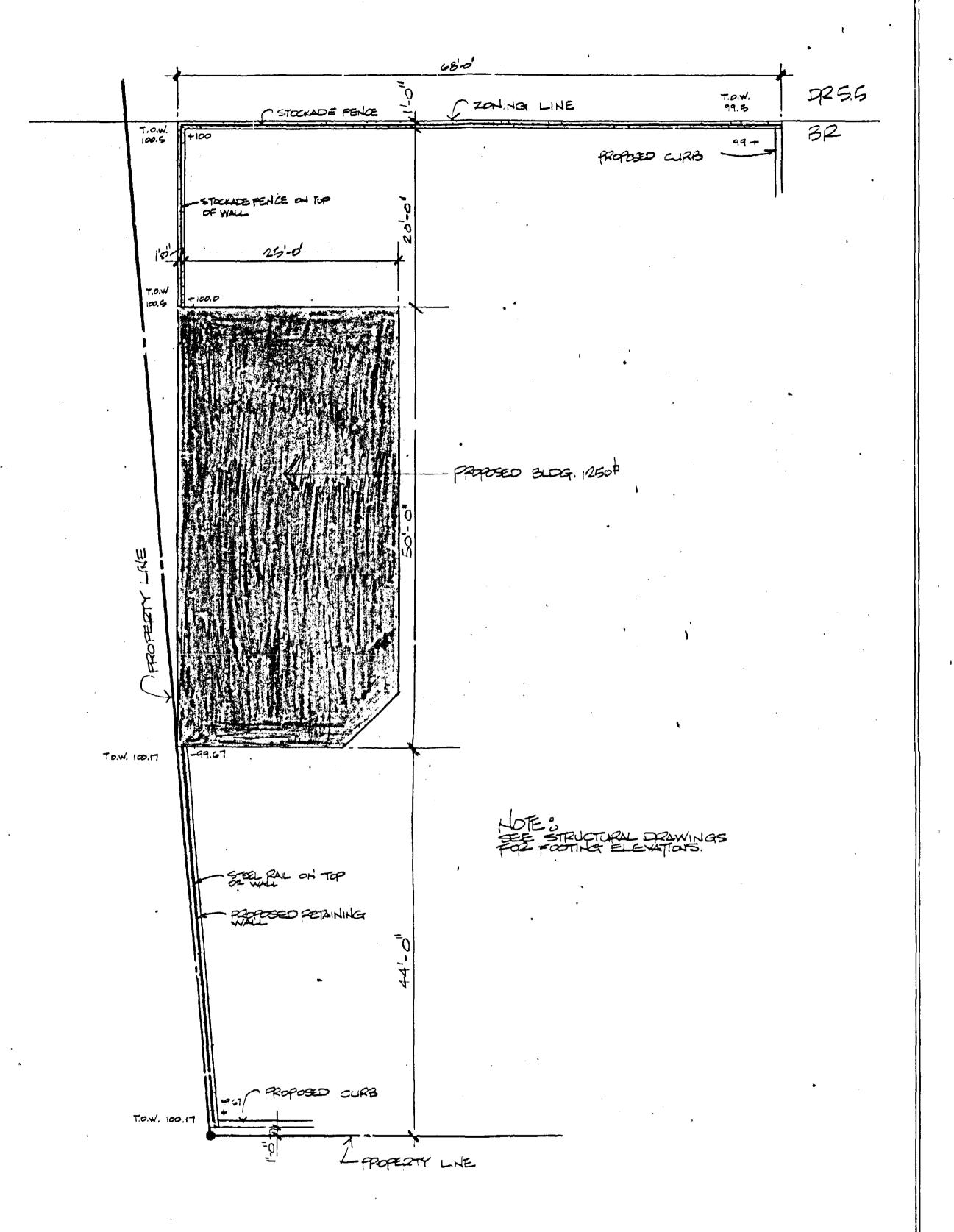


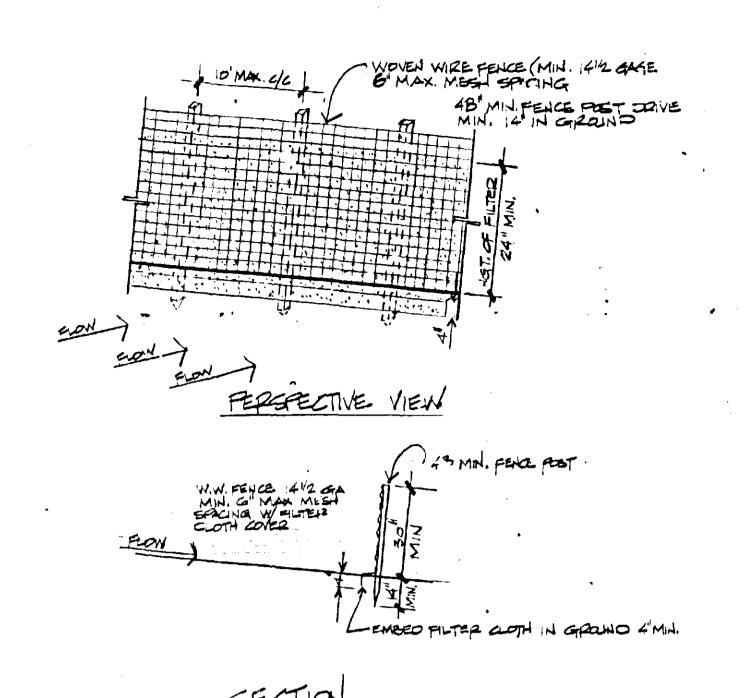






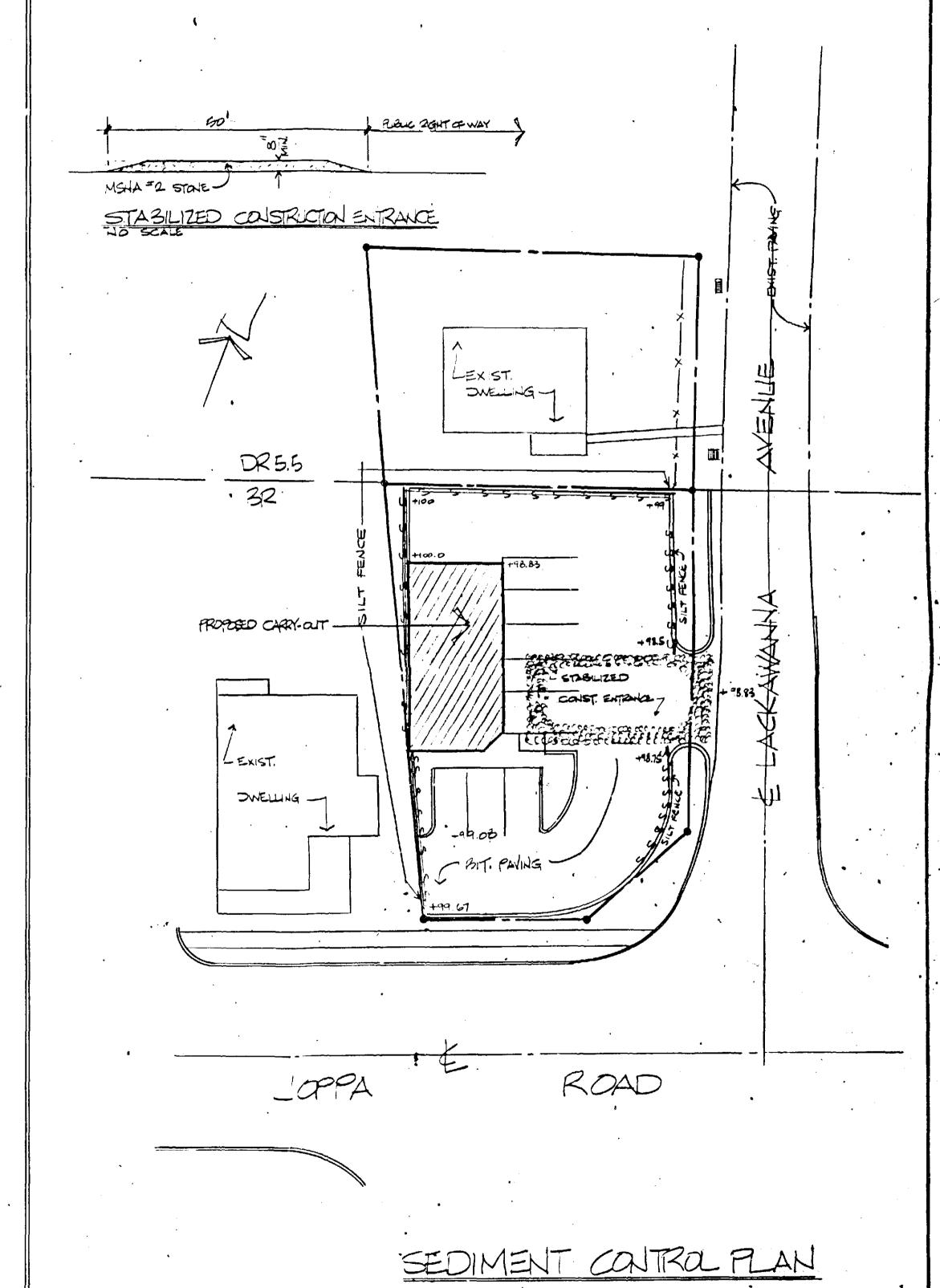






SILT FENCE CLOTH: FILTER X, POLY FILTER X, MIRFI 100x, LAUREL EROSAN CONTROL CLOTH, GIOM, OR APPROVED EQUAL, WHICH IS RESISTANT TO THE SUN'S RAYS.

SILT FENCE DETAIL



SCALE : 1"=20"

RETAINING WALL PLAN SCALE: 1/8"-1-0"

> THE ITALIAN INN LOPARD. & LACKAWANNA AVE. BALTIMORE COUNTY, MARYLAND



Thos. A. Lloyd CONSTRUCTION COMPANY
BUILDERS.....CONTRACTORS.....DESIGNERS
617 STEMMERS RUN, ROAD
ESSEX, MARYLAND 21221......682-5252

SECTIVENT FLAN RETAINING WALL PLAN

scale: NOTED drawn by: CES checked by: TAL date:

sheet SP2

Pursuant to the addrivement, posting of property, and public hearing on the Petition and it appearing that by reason of the following finding of facts that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the petitioner(s), the Variance(s) should be had; and it further appearing that by reason of the granting of the Variance(s) requested not adversely affecting the health, safety, and general welfare of the community, the Variance(s) should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltirore County, this day of _____, 19___, that the herein Petition for the Variance(b) to permit

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of failure to show practical difficulty and/or unreasonable hardship, the Variance(s) should not be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this day of _____, 19___, that the herein Petition for the Var. nce(s) to permit

Zoning Commissioner of Baltimore County

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

February 1, 1980

COUNTY OFFICE BLDG. 111 W. Chesapeake Ave. Towson, Maryland 21204

000

Nicholas B. Commodari Chairman

MEMBERS

Bureau of Department of Traffic Engineering State Roads Commission Bureau of Fire Prevention

Health Department Project Planning **Building Department** Board of Education Zoning Administration Industrial Development

Julius W. Lichter, Esquire 305 West Chesapeake Avenue Towson, Maryland 21204

> RE: Item No. 69 Petitioners-Sarandos Macris, et ux Variance and Special Hearing Petitions

Dear Mr. Lichter:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

The subject property, located on the norhtwest corner of Joppa Road and Lackawanna Avenue in the 9th Election District, is presently improved with dwellings. Adjacent properties to the west, north, and east are improved with a retail store, individual dwellings, along Lackawanna Avenue, and a transmission shop, respectively. Any future plans submitted to this office must reflect this latter use.

This property was the subject of a previous zoning hearing (Case No. 76-174-ASPH) in which a similar request for a setback Variance and a Special Hearing for off-street parking in a residential zone were denied. While your clients' present proposal is similar to the previous one, all parking for the proposed building will be located within the B.R. zoned portion of the site. However, the Special Hearing is required in order to allow the access drive to be constructed through the residentially zoned (D.R. 5.5) portion in the rear. Particular attention should be afforded to the comments of the Department of Permits and Licenses concerning the type of construction of the proposed building.

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of the the abov Special Hearing for_____ IT IS ORDERED by the Zoning Commissioner of Baltimore County this _____day of_____, 196___, that the herein Petition for Special Hearing should be and the same is granted, from and after the date of this order. Zoning Commissioner of Baltimore County Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of_____

the above Special Hearing should NOT BE GRANTED. IT IS ORDERED by the Zoning Commissioner of Baltimore County, this _____day of_____, 196__, that the above Special Hearing be

> Zoning Commissioner of Baltimore County

Item No. 69 Variance and Special Hearing Petitions February 1, 1980

and the same is hereby DENIED.

Enclosed are all comments submitted from the Committee to this office. The remaining members felt that no comment was warranted. This petition is accepted for filing on the date of the enclosed filing certificate. Notice of the hearing date and time, which will be held not less than 30 nor more than 90 days after the date on the filing certificate, will be forwarded to you in the near future.

> Very truly yours, Chairman Zoning Plans Advisory Committee

NBC:hk

Enclosures

cc: Hudkins Assoc., Inc. 101 Shell Bldg. 200 E. Joppa Rd. Towson, Md. 21204

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS

TOWSON, MARYLAND 21204

November 28, 1979

Mr. William E. Hammond Zoning Commissioner County Office Building Towson, Maryland 21204

> Re: Item #69 (1979-1980) Property Owner: Sarandos (Sam) and Eva Macris N/W ccr. Joppa Rd. & Lackawanna Ave. Existing Zoning: B.R. & DR 5.5 Proposed Zoning: Variance to permit a rear setback of 0' in lieu of the required 30' and to permit 13 parking spaces in lieu of the required 25 spaces. Special Hearing to allow an access drive within a parcel of property zoned DR 5.5 that is contiguous with a parcel of property zoned B.R. which is the location of the petitioner's business. Acres: 0.31 District: 9th

Dear Mr. Hammond:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item. General:

The comments which are supplied in connection with the Zoning Advisory Committee review of this property for Item 127A (1973-1974) and Item 131 (1975-1976) remain valid and applicable and are referred to for your consideration.

ELLSWORTH N. DIVER, P.E.

END: EAM: FWR: ss

cc: J. Wimbley J. Somers W. Munchel

N-NE Key Sheet 37 NL 11 Pos. Sheet NE 10 C Topo 70 Tax Map

Attachments

Towson, Maryland 21204

Julius W. Lichter, Esquire

305 West Chesapeake Avenue

cc: Hudkins Assoc., Inc. 101 Shell Bldg. 200 E. Joppa Rd. Towson, Md. 21204

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING County Office Building III W. Chesapeake Avenue Towson, Maryland 21204

Your Petition has been received and accepted for filing this ______ 28th of November, 1979.

> WILLIAM E. HAMMOND Zoning Commissioner

Petitioner Sarandos Macris, et ux

Petitioner's Attorney Julius W. Lichter, Esq. Reviewed by:

Chairman, Zoning Plans Advisory Committee

Belitaber County Marghan Department Of Public Burks COUNTY OFFICE BUILDING TOWSON, MARYLAND 21204

February 17, 1975

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1 - 1131 (1975-1976) the day formers of Michigan A. Harmin Br. a to court the continue and the Felacing Coelect En Dis. 2 Troposed Tealing: Viriance from side yard, rese yard and no. of parking spaces; Special Feating Teal of the street parking in a DR 5.3 zone. No. of Adres: 0.31 District: Suh

Dear ir. Differati

The following a memory are furnished in regard to the pine substitut to this of the for review by one Moming Advisory Committee in connection with the subject

contains on glind in connection with the Zoning Alvisory Cosmittee review colubio ista for Inc. \$217-A (1973-1974) and referred to for your consideration.

The Publication chall be responsible for the cost of capping any rater main a diet plugging the schiltry sower service connections no longer required to serve the reddinger.

It appears that collitional fire hydrant protection may be required in the vioiairy.

Whis office has no further comment in regard to the plan substitted for Zoning Advisory Committed review in connection with this Item #131 (1975-1976).

> Logistical on Live ELLENORIA N. DEVER, P.E. Chief, Bureau of Engineering

LID: DIM: Folk: 85

cu: Sh. Sunchel H-ME May Sheet 37 12 11 205. Sheet NO 10 C Regio 70 ೯ಎಂ. ಬ್ರಾ

Baltimore County, Maryland Department Of Public Works COUNTY OFFICE BUILDING TOWSON, MARYLAND 21204

February 15, 1974

Bureau of Engineering ELLSWORTH N. DIVER, P. E., CHIEF

> Mr. S. Eric Dillenna Zoning Commissioner County Office Puilding Towson, Yaryland 21204

> > Re: Item #127A (1973-1974) Property Owner: Faulina & Harry C. Walls F/S of Joppa Rd. and the W/S of Jockssonna Ave. Existing Zoning: P.R. and P.R. 5.5 Proposed Zoning: Variance to parmit a front yard methack of 20! instead of the required 25!, a slde yard setteet on the S/D side of 5' instead of the required 30' and to might 12 parking spaces instead of the required 27 purking spaces No. of Abres: 0.307 District: 5th

Dear Mr. Dillenna:

The following comments are furnished in regard to the plat substitted to this office for review by the Loning Advisory Consistee in connection with the subject item.

Martha aves:

Joppa Road, an existing County road, was recently improved in this vicinity as a lig-foot closed-type rendway erese-caction on a 70-foot right-of thesy as a foderel Aid Project; no further highway improvements are recailed.

Lackawanna Avenue, an establing realidardiel for your of the second to the provide Highway improvements, including highway right-of-way to. in the state of th revertible essentite for clopes, will be recalred in connected till any grading or building pendit application.

The enturnoe locations are subject to approval by the Department of Traffic Engineering and thall be constructed in accordance with Laltimore County Standards.

Scalingat Congreta

Development of this property through stripping, grading and stabilization duald result in a sediment pollution problem, demaning private and public beldings formula on of the property. A grading permit is, therefore, pacessay for all grading, halading the stripping of ten soil.

BALTIMORE COUNTY
DEPARTMENT OF HEALTH
TOWSON, MARYLAND 21204 DONALD J. ROOP, M.D., M.P.H. DEPUTY STATE & COUNTY HEALTH OFFICER

The second section of the section of t

November 23, 1979

Mr. William E. Hammond, Zoning Commissioner Office of Planning and Zoning County Office Building Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #69. Zoning Advisory Committee Meeting of October 2, 1979, are as follows:

> Property Owner: Location:

Sarandos (Sam) & Eva Macris NW/C Joppa Rd. & Lackawanna Ave. Existing Zoning: B.R. & D.R. 5.5 Proposed Zoning: Variance to permit a rear setback of 0' in lieu of the required 30' and to permit 13

parking spaces in lieu of the required 25 parking spaces in flew of the required 25 spaces. Special Hearing to allow an access drive within a parcel of property zoned D.R. 5.5 that is contiguous with a parcel of property zoned B.R. which is the location of the petitioner's business.

Acres: District:

 $9 ext{th}$

Metropolitan water and sewer is available.

If a food service facility is proposed, complete plans and specifications must be submitted to the Plans Review Sertion, Environmental Support Services, Baltimore County Department of Health, for review and approval prior to construction.

BUREAU OF ENVIRONMENTAL SERVICES

IJF/JRP/?th&

cc: J. A. Butcher

Item #127% (1913-1971) Property Owners Paulice and Harry J. Walls Fagg 2 Fobiusry 15, 190

Storm Dreins:

rovisions for accommodating storm water or drainage have not been indicated on the submitted plan which must be rediced to also show the amixting storm drains, inlats and atility eastments.

The Patitioner curt provide necessary Craince facilities (temporary or permissent) to premind of the note on the maisances or damages to enjace to a providing, expensally by the concentration of sorio a waters. Correction of thy problem which may result, due to impropri for ing un improper installation of dratrage facilities, would be the full respon Milling of the lotitioner.

Valor of Salar Come

- Fiblia vetor i unoly sol semitory soverviours some or also in distinct and also process y. It appears that additional fire hydrost protective ments for it as in the violation.

> Very truly yours, Real To Association Didional a. Dive , a.m. Ghiof, Daresu of the Land. Er

DID: ED: Fin: es

co: G. Reier

Nanny Kary Shoot 37 NR II Pos. Shoat NE 10 C Tomb 70 Tax Top

fire department TOWSON, MARYLAND 21204 (301) 825-7310

Paul H. Reincke

Cctober 8, 1979

Office of Planning and Zoning Baltimore County Office Building Towson, Maryland 21204

Mr. William Hammond, Zoning Commissioner Attention: Zoning Advisory Committee

Re: Property Owner Sarandos (Jam) & Eva Macris

Location: NW/C Joppa Rd. & Lackawanna Ave.

Zoning Agenda: Meeting of 10/2/79

Gentlemen:

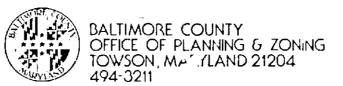
Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "x" are applicable and required to be corrected or incorporated into the final plans for the property.

- (x) 1. Fire hydrants for the referenced property are required and shall be located at intervals or <u>300</u> feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at

EXCEEDS the maximum allowed by the Fire Department.

- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.
- (x) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code" 1976 Edition prior to occupancy.
- () 6. Site plans are approved as drawn.
- () 7. The Fire Prevention Bureau has no comments, at this time.

Fire Prevention Bureau Planning Group Special Inspection Division



JOHN D. SEYFFERT DIRECTOR

January 24, 1980

Mr. William Hammond, Zoning Commissioner Zoning Advisory Committee Office of Planning and Zoning Baltimore County Office Building Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #69, Zoning Advisory Committee Meeting, October 2, 1979, are as follows:

Property Owner: Sarandos (Sam) and Eva Macris Location: NW/C Joppa Road and Lackawanna Avenue Existing Zoning: B.K. and D.R.5.5 Proposed Zoning: Variance to permit a rear setback of 0' in lieu of the required 30' and to permit 13 parking spaces in lieu of the required 25 spaces. Special Hearing to allow an access drive within a parcel of property zoned D.R.5.5 that is contiguous with a parcel of property zoned B.R. which is the location of the petitioner's business. Acres: 0.31 Acres: 9th

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

Landscaping should be provided. The driveway along the west property line does not allow sufficient area to provide the screen planting as indicated in note #9.

Very truly yours,

Planner III Current Planning and Development

baltimore county TOWSON, MARYLAND 21204

JOHN D. SEYFFERT

October 25, 1979

Mr. Villiam E. Hammond, Zoning Commissioner Office of Planning and Zoning County Office Building Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #69 Zoning Advisory Committee Meeting, October 2, 1979 are as follows:

Property Owner: Sarandos (Sam) & Eva Macris Location: NWS Joppa Road & Lackawanna Ave. Existing Zoning: B.R. & D.R. 5.5 Proposed Zoning: Variance to permit a rear setback of 0' in lieu of the required 30' and to permit 13 parking spaces in lieu of the required 25 spaces. Special Hearing to allow an access drive within a parcel of property zoned D.R. 5.5 that is contiguous with a parcel of property zoned B.R. which is the location of the acres: 0.31 Acres: 0.31 District: 9th petitioner's business.

The items checked below are applicable:

- X A. Structure shall conform to Baltimore County Building Code (B.O.C.A.) 1970 Edition and the 1971 Supplement, State of Maryland Code for the Handicapped and aged and other applicable codes.
- X B. A building permit shall be required before construction can begin. razing and miscellaneous
- Permits shall be required.
- D. Building shall be upgraded to new use requires alteration permit.
- E. Three sets of construction drawings will be required to file an application for a building permit. X F. Three sets of construction drawings with a registered Maryland
- Architect or Engineer's original seal will be required to file an application for a building permit.
- X G. Wood frame walls are not permitted within 3'0" of a property line. Contact Building Department if distance is between 3'0" and 6'0"
- H. Requested setback variance conflicts with the Baltimore County Puilding Code. See Section ____

CEB:rrj

X J. Comment: Fire wall will be required on west wall if it touches the property line. Compliance to Handicapped Cole not indicated. NOTE: These comments reflect only on the information provided by the drawing submitted to the office of Planning and Zoning and are not to be construed as the full extent of any permit.

Charles E. Burnham, Chief

Plans Review

battirnore county department of traffic engineering TOWSON, MARYLAND 21204

STEPHEN E. COLLINS

November 21, 1979

Mr. William Hammond Zoning Commissioner County Office Building Towson, Maryland 21204

> - ZAC - Meeting of October 2, 1979 Property Owner: Sarandos (Sam) & Eva Macris Location: NW/C Joppa Rd. and Lackawanna Ave. Existing Zoning: B.R. and D.R. 5.5 Proposed Zoning: Variance to permit a rear setback of 0' in lieu of the required 30' and to permit 13 parking spaces in lieu of the required 25 spaces. Special Hearing to allow an access drive within a parcel of property zoned D.R. 5.5 that is contiguous with a parcel of property zoned B.R. which is the location of the petitioner's business.

0.31 Acres: District:

Dear Mr. Hammond:

The requested variance to the rear setback and variance to permit access within a D.R. 5.5 zone is not expected to cause any traffic problems.

The requested variance to parking can be expected to cause parking problems in the residential area to the north of the site.

Sincerely yours,

Michael / Themes Michael S. Flanigan Traffic Engineering Associate II

MSF/mjm

BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND - 21204

Date: September 25, 1979

Mr. S. Eric DiNenna Zoning Commissioner Baltimore County Office Building Towson, Maryland 21204

Z.A.C. Meeting of: October 2, 1979

RE: Item No: 29, 65, 66, 67, 68, 69, 70, 71, 72 Property Owner: Location: Present Zoning: Proposed Zoning:

District: No. Acres:

Dear Mr. DiNenna:

All of the above have no adverse effect on student population.

Very truly yours, (1) Click Leturick W. Nick Petrovich.

Field Representative

KNP/bp

T. BAYARD WILLIAMS, JR., VICE-PREBIDENT MARCUS M. BOTBARIS

MRS. LORRAINE F. CHIRCUS ROGER B. HAYDEN

THOMAS H. BOYER

ALVIN LORECK MRS. MILTON R. SMITH. JR. RICHARD W. TRACEY, D.V.M.

ROSERY V. DUBEL, SUPERINTENDENT

Mr. William C. Hammond Zoning Commissioner 111 West Chesapeake Ave. Towson, Md 21204

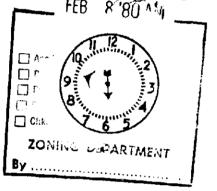
Dear Mr. Hammond

The newlests of hackamana, Wayne and Engi Avenues plan to attend the going heaving on Fall2 at 9:45-AM to protect the zoning request. Weather permitting we should have a large turnout of concerned homeon in.

I am acting as sprokesman for the groups.

_ FEB 8'80 Min 665-8193

cc: Jw. Hersian, III people's Conset to Bilto Conty



SARALDOS (SAM) MACRIS, MUX

STEINBERG, LICHTER, COLEMAN & ROGERS 305 W. CHESAPEAKE AVENUE, TOWSON, MD. 21204 (301) 321-0600

MELVIN A. STEINBERG JULIUS W. LICHTER EDWARD L. COLEMAN DONALD F. ROGERS

17

April 21, 1980

IN REPLY REFER TO:

WW 08, 2 5 84V

Mr. William E. Hammond Zoning Commissioner for Baltimore County County Office Building

Towson, Maryland 21204 Re: Application of Sarandos Macris and Eve Macris. Property: Joppa Road at Intersection with Lackawanna Avenue

Item No. 80-150-ASPH Case No.

Dear Commissioner Hammond:

In response to the correspondence of the People's Coursel of March 7, 1980, I enclose herewith the opinion of the Court of Special Appeals of Maryland in Hofmeister, et al vs. The Frank Realty Company, 35 Md. App. 691, 373 A.2d 273 (1977), which is apparently the definitive Maryland case relating specifically to Baltimore County regarding the use of residentially zoned property for an access route to commercial property. Section 409.4 of the Zoning Regulations of Baltimore County grants the Zoning Commissioner the power to issue use permits for commercial parking in residential zones and the aforementioned case recognizes that power. The power to approve an access drive within residentially zoned property that is contiguous to property zoned commercially is ancilary to the power granted the Zoning Commissioner pursuant to Sections 409.4 and 500.7 of the Zoning Regulations and has long been so recognized in Baltimore County.

As developed at the time of the hearing, the Petitioner, with the approval of the setback variance requested on the commercially zoned property, would be able to provide the necessary parking spaces required by the regulations within the commercially zoned portion of his property. The approval of the access drive, as requested, is in the public interest for the following reasons:

OFFICE OF PLANSING & 70N TOWSON, MARYLAND 21204

WILLIAM E HAMMOND ZONING COMMISSIONER

January 29, 1980

Julius d. Lienter, Esquire Steinberg, Lichter, Coleman & Rogers 305 W. Chesapeake Avenue Towson, Maryland 21204

> RE: Petition for Variance and Special Hearing NW/C Joppa Road and Lackawanna Avenue Sam Macris, et ux - Case No. 60-150-ASPH

Dear Sir:

This is to advise you that \$68.25 is due for advertising and posting of the above-property.

Please make check payable to Baltimore County, Maryland and remit to Sondra Jones, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Zoning Commissioner

WEH: sj

Mr. William E. Hammond

Page 2 April 21, 1980

Re: Application of Sarandos Macris and Eve Macris

Zoning Commissioner for Baltimore County

1. The off-street parking requirements will be met (totally) within the commercially zoned portion of my client's

2. Access to the property will be from Lackawanna Avenue rather than obstructing traffic on Joppa Road.

3. The residentially zoned portion of my client's property will provide significant buffering from the residences on Lackawanna Avenue.

Further, the County's desire to prohibit access from the property directly onto Joppa Road of necessity requires that ingress and egress be provided from Lackawanna Avenue. A denial of the access as requested would not only severly damage my client but would damage the surrounding area.

Very truly yours,

JWL:lsp

Enclosure

cc: Jack Hessian, Esquire Office of People's Counsel Julius W. Lichter, Esquire Steinberg, Lichter, Coleman & Rogers 305 W. Chesapeake Avenue Towson, Maryland 2120

NOTICE OF HEARING

RE: Petition for Variance and Special Hearing - NW/C of Joppa Road and Lackawanna Avenue - Sam Macris, et ux - Case No. 80-150-ASPH

9:45 A.M. Tuesday, February 12, 1980

PLACE: ROCM 106 COUNTY OFFICE BUT LDING, 111 W. CHESAPEANE AVENUE

TOWSON, MARYLAND

BAIMIMORE COUNTY

1/10/80

PETITICS FOR VARIANCE AND SPECIAL HEARL

9th District

Petition for Variance for mar yard setback and parking and ZONING: Special Hearing for an access drive

LOCATION: Northwest corner of Joppa Road and Lackawanna Avenue

Tuesday, February 12, 1980 at 9:45 A.M. DATE & TIME:

Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson,

The Zoning Commissioner of Faltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

> Petition for Variances to permit a rear yard setback of O feet in lieu of the required 30 feet and to allow 13 parking spaces in lieu of the required 25 spaces and Special Hearing under Section 500.7 of the Zoning Regulations of Ealtimore County, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an access drive within a parcel of property zoned D.R. 5.5

The Zening Regulation to be excepted as follows:

Section 238.2 - side and rear yard setbacks Section 409.2 - Parking space

All that parcel of land in the Ninth District of Baltimore County

Being the property of Carandos (Sam) Macris, et ux, as shown on plat plan filed with the Zoning Department

Hearing Date: Tuesday, Pebruary 12, 1980 at 9:45 A.M. Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

> BY ORDER OF WILLIAM E. HATTOND ZONING CONCHESIONER OF BALTIMORE COUNTY

Cite as 373 A.2d 273

murder case: nurder in the first dene as such but merely a jurder, that the status classification may be that the murder was the perpetration of a make robbery an essenorder and it follows that

necessarily involve rob-167, 199, 254 A.24 3st. 277 A.2d at 258.

ssary, however to apply e in Price. Instead, we single act of throwing · into a building was the lying both offenses, one ed at property and the and hence the offenses separate so as not to

ndicated, robbing and te and distinct offenses y involves the other. oth offenses arose from d not merge, here since the offenses surely cas-: jeopardy is simply inap-

states representing the authority (footnote 1 hat convictions for both the underlying felon, de ohibition against double ground that murder and slony are different of-

example, has repeated; ony murder case, an em h as burglary or rulers and generically entirely nnected" offense. Proste Y. 221, 129 N.E. 83, IN 'eople v. Lytton, 25 N (1931), where Cardina Cardina he Court, explained in dony merely characters. ability rather than

HOFMEISTER V. FRANK REALTY CO.

York courts have reasoned that "lo]roof of these [underlying] crimes, at most, was only evidence of the inferred criminal intent and not the el ment of crimical intention itsel.

Proof of the commission of an underlying felony in a felony murder case is a condition of the murder charge conviction but is not an element of that crime. If it were an element of the felony murder. the elements of such a crime would be as various as the underlying felonies might be." People v. Tutuska, 19 Misc.2d 308, 192 N.Y.S.2d 350, at 357 (1959), affirmed, 11 A.D 2d 906, 205 N.Y.S.2d 1006 (1960). ship between the offenses, it said:

essary to the murder charges. Proof of of a special exception within the delegated different elements is necessary to each authority of zoning commissioner. offense, even though the same evidence may go to both offenses."

State v. Chambers, 524 S.W.2d 826, 829 (Mo 1975).

Thus, the reasoning and authority of our sater states and Maryland law convincingly &monstrate that, according to the better raumed view, felony murder and the underlying felony are separate and distinct 2. Statutes \$210, 211 offenses, the elements of which do not over-The underlying felony is only evidence walker and is not actually an element of the murder. Convictions for both murder ■ the perpetration of a robbery and at- 3. Statutes ⇔219(1) tempted robbery therefore do not violate the prohibition against placing a defendant to on in jeopardy. I would, therefore, affre beth judgments.

SMITH has authorized me to state 4. Zoning = 280 the thent

Md. 273

John HOFMEISTER et al., The FRANK REALTY COMPANY.

Court of Special Appeals of Maryland. May 11, 1977.

Owner of catering establishment located in business zone applied for special use permit pursuant to Baltimore county zoning regulations to use land in residential zone Similarly, the Supreme Court of Missouri for off-street parking. The county zoning Fis recognized that the elements of the commissioner granted the permit and felony murder and the underlying felony protestants appealed. The county board of are dissimilar. In discussing the relation- appeals upheld the grant and appeal was taken. The Circuit Court, Baltimore Coun--With respect to the murders, the under- ty, John Grason Turnbull, J., upheld the hing felony serves only to prove the in- decision of the county board of appeals and tent or state of mind necessary to the protestants appealed. The Court of Special murders; and proof of the underlying Appeals, Moylan, J., held that granting of felony proves both it and the intent nec- use permit for off-street parking was grant

1. Zoning ⇐=233 Ultimate arbiter of intended meaning of county zoning law is the local legislative user of the contested words. Legislative intent may be discerned by

examining a statute's title or preamble as

strong evidence on question of its best con-

off-street parking in a residential zone is a

Administrative interpretations contem-

poraneous with passage of a statute are

373 ATLANTIC REPORTER, 2d SERIES

variety of "special exception" within con- Although the problem before us for nontemplation of a Baltimore County ordinance lution is exclusively one of law, the factual delegating to the county zoning commis- background must be set. The appeller, sioner the power to issue special exceptions. Frank Realty Company (Frank), owns Ox-Code 1957, art. 25A, § 5(u); Acts 1941, c. erlea Hall, which is a catering establish-

See publication Words and Phrases for other judicial constructions and

whom was F. Vernon Boozer, Towson, on the brief, for appellants.

lan, Plumhoff & Williams, Towson, on the brief, for appellee.

MOYLAN and LOWE, JJ.

2. The permit was issued subject to the follow-

1. Compact screening, a minimum of six (6) feet in height, be constructed around the entire subject property, excluding entrances and exits, and that portion of the subject property which is immediately adjacent to the Overlea Hall catering establishment. 2. Any lighting that is constructed on the subject property is to be a maximum of six

were Piper & Marbury, Baltimore, and Noside streets. On the tract, Frank desired to

MOYLAN, Judge.

the law generally, it falls upon the head of trict. Catering is a use permitted in such a the zoning law with peculiar vengeance. zone. The land on which the parking lot The root problem giving rise to the present was to be built, however, was zoned Resiappeal was the failure of the lawmaking dential. Off-street parking is not a use authorities of Baltimore County to distinguish cleanly between the Genus "Special Exceptions" and the Species "Special Exceptions." The phrase was used in one critical context, at least, with a broad, generic meaning; the same phrase was used on other occasions with a more limited and who are residents of the affected area, the specific meaning; the law making authority Baltimore County Zoning Commissioner on never pinpointed which meaning it had in June 4, 1974, granted Frank a Special Use mind on a particular occasion nor did it Permit for off-street parking in a resideneven seem aware of the potential semantic tial zone. Appellants, joined by the Baltiproblem lurking within its linguistic impre- more County Deputy People's Counsel,3 ap-

1. The more exact residential zoning classification does not appear in the record

ing conditions:

ment in Baltimore County. It is located un-Belair Road, a major thoroughfare in a business district. Overlea Hall does not have its own parking lot, but it is situated William F. C. Marlow, Jr., Towson, with

The customers of Overlea Hall park either next to a Union Trust Bank, which does on the bank lot or on the surrounding streets. In 1970, 1972 and 1973, Frank ac-E. Stephen Derby, Baltimore, with whom quired three properties, adjacent to and in grated tract and have g frontage on two

Argued before GILBERT, C. J., and build a parking lot for 84 vehicles. Pursuant to the Baltimore County Zoning Regulations (1975 Ed.) (BCZR), Overlea Hall was zoned Business Local (BL) in a If the imprecise use of language plagues Commercial Community Core (CCC) Dispermitted as of right in a residential zone. but is a permitted use if a Special Use I ermit is applied for and issued pursuant to

> Over the protestations of the appellants. pealed to the County Board of Appeals.

§ 409.4 of the BCZR.

3. Unly ingress be afforded from the entrance on Overlea Avenue.

3. The People's Counsel is appointed by the Baltimore County Executive and is charged with representing the public interest before the Zoning Commissioner, the County Board of Appeals, or the courts in any matter involving the Baltimore County Zoning Regulations. Baltimore County Charter 3 524 I(b); Baltimore County Code (1968 ed., 1975-75 Cum Supp.). for a Special Ed contend that price County Commission the Baltimore C delegated to the Baltimore County "Special Permits". The final premise major change wa authority by Bil County Council ir

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The County Board

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The appellants do not contend that the action of the County Board of Appeals was "arbitrary and capricious" or lacked factual support. The sufficiency of the evidence on the merits of whether Frank had satisfied The appellants argue strenuously that "No the pertinent requirements was not serious- mention was made of any other authority ly disputed. The key issue presented by the being vested in the Zoning Commissioner appellants is that of whether the Zoning Commissioner and the County Board of Ap- that the term and authority to issue a 'spepeals possessed the delegated authority to cial permit' was deleted altogether." It is grant such Use Permits at all. In question their position that in the repealing and reis the general authority and not the merits enacting of the grant of authority to the of this individual exercise of authority. Zoning Commissioner that occurred in 1960, Before addressing its merits, we will

state the argument as posed by the appellants. They contend that a "Special Permit" (or Use Permit) and a "Special Exception" are distinct legal phenomena. In this regard, they find arguable support in the if a "Use Permit" is a variety of "Special words of the Court of Appeals in Marek v. Exception" within the contemplation of Board of Appeals, 218 Md. 351, 357, 146 § 22-23, then the authority to issue such a A.2d 875, to the effect that a request for an "Use Permit" has been delegated to the off-street parking permit "is not a request Zoning Commissioner and the present decifor a Special Exception." They further sion will be affirmed. If, on the other contend that prior to 1960, the Baltimore hand, a "Use Permit" does not fit under the County Commissioners and their successors, umbrella of "Special Exception," the authe Baltimore County Council, explicitly delegated to the Zoning Commissioner of Baltimore County the power to issue both and the decision must be reversed. The "Special Permits" and "Special Exceptions." appellee urges that a "Use Permit" is a The final premise in the argument is that a "Special Exception"; the appellants urge major change was made in this grant of that it is not. authority by Bill No. 80, enacted by the We conclude that the question is not so County Council in 1960. That bill explicitly simple and clearcut. A "Use Permit" both 4. An appeal to the County Board of Appeals is 6. Appeals to the Circuit Court and then to the authorized in Md.Anno.Code, Art. 25A § 5(u) (1975 Cum.Supp.) and § 501.2 of the BCZR.

5. To be more fully discussed hereinafter.

by § 34-11. It referred explicitly to both

"special exceptions" and "special permits."

It explicitly confirmed the authority of the

Zoning Commissioner to continue to do

those things which had been "required by

§ XIII of the Zoning Regulations of Balti-

more County, as adopted January 2, 1945,

The distinction between the Use Permit

for off-street parking in a residential zone

under § 409.4, on the one hand, and the

"special exception," on the other hand—the

listinction on which the appellants largely

build their present argument-was first

made by the Court of Appeals in Marek v.

Baltimore County Board of Appeals, 218

and as amended November 15, 1946."

Cite as 373 A.2d 273 who, on July 29, 1975, upheld the grant.4 repealed § 34-11 of the Baltimore County The County Board of Appeals found that Code (1958 Ed.) which had delegated certhe requirements of § 409.4 and of § 502.15 tain powers (including the power to issue of the BCZR had been satisfied and held Special Permits) to the Zoning Commissionthat the Zoning Commissioner had the pow- er, and replaced it with § 22-23 which

> "Authority of zoning commissioner to provide for special exceptions and vari-

> Subject to the appropriate principles, standards, rules, conditions and safeguards as set forth in the zoning regulations, the zoning commissioner may . . make special exceptions to the zoning regulations in harmony with their general purpose and intent . . . "

> ." and "More important is the fact

the Zoning Commissioner was stripped of

all power to issue Special Use Permits. The problem is clear-cut. The grant of authority, by its terms, authorizes "Special Exceptions" but not "Use Permits." Thus. thority to issue such "Use Permit" has not been delegated to the Zoning Commissioner

Court of Special Appeals are authorized by Md.Anno.Code, Art. 25A § 5(u) and § 501.4 of the BCZR. See Levy v. Seven Slade, Inc., 234 Md. 145, 149, 198 A.2d 267, 269 (1964).

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had in mind upon the particular occasion when they used it. A "Use Permit" is within the generic meaning of "Special Exception"; it may not a within the specific meaning of "Special Exception." The question, therefore, becomes that of whether the Baltimore County Council, when it delegated to the Zoning Commissioner the power to make "Special Exceptions," intended to use the phrase in its broad and generic sense or

in its narrower and more specific sense. Having stated the issue, we seek the path to its resolution through the legislative and linguistic tangle of the Baltimore County zoning experience. We begin with a broad principle of zoning law not parochial to Baltimore County but universal to the zoning cosmos. Within each zone created, there are primary and designated uses available as a matter of right with no permission needing to be sought from any zoning authority. There are other uses proscribed by law and, therefore, beyond the pale, absent a zoning reclassification. Between the two poles is a borderland wherein certain uses are not prohibited by law but neither are they absolutely permitted as a matter of unconditioned right. Generally speaking, they are privileges which must be sought from and authorized by some administrative agency (a zoning commissioner, a zoning board, etc.), which possesses the authority to condition the grant of permission, influenced by a number of relevant social considerations. The uses of the property in § 15.01, speaks to the same effect, at 84: issue are permitted uses, generally compatihle with the zone but not at every or any location therein or without certain restrictions or conditions being imposed. This determination of compatibility and this imposing of conditions is vested in an appropriate this broad phenomenon, the vocabulary has been far from uniform but the law has recognized that the same principle is afoot

even when the labels may vary. 82 Am.Jur.2d, Zoning and Planning, XIII.

is and is not a "Special Exception," depend- "Generally; terminology," speaks of both

ing upon ich meaning of "Special Excepthe general phenomenon and its fluctuating tion" the legislative authors of the phrase vocabulary at 827-828:

administrative authority. In describing

C. "Special Permits or Exceptions," § 281 ning, Ch. 54, § 1, n. 1, uses both the terms

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A 'special permit' or 'special exception' designates a species of administrative permission which allows a property owner to put his property to a use which the regulations expressly permit under conditions specified in the zoning regulations themselves. Some zoning laws or ordinances use the term 'conditional use permit, 'special exception permit,' or 'special use permit' to refer to this type of administrative permission. In one jurisdiction, the term 'waiver use approval' has been used. But regardless of which of the foregoing terms is used, the nature of the administrative permission and of the use permitted is, viewed broadly and substantively, the same, since each involves a use which is permitted rather than proscribed by the zoning regulations. In the words of the Supreme Court of Connecticut, 'the terms "special exception" and "special permit" hold the same legal impact and can be used inter-

The function of a special permit is to bring some flexibility to the rigid restrictions of a zoning ordinance while at the same time controlling troublesome or somewhat incompatible uses by establishing, in advance, standards which admit the use only under certain conditions or circumstances 1

3 Anderson, American Law of Zoning. "The 'special exception,' the 'special permit,' and the use permitted subject to administrative approval, are qualitatively the same. Each involves a use which is permitted rather than proscribed by the zoning regulations. Each is allowed only upon approval of a board of adjustment or other administrative body. And in each case, the board is guided and its power limited by hearing require-

ments and standards." 2 Rathkopf, The Law of Zoning and PlanHOFMEISTER v. FRANK REALTY CO.

Ry." speaks of L exception use" and "special excepand its fluctuat bermit" but claims that both are mis-He suggests that a more accurate er beription would be "conditional use pera species of adm because " no 'exception' is to the provisions of the ordinance in property to a be sentting such use; the permit granted is expressly pers a use specifically provided for in the

fied in the zoni: Trance in the case in which conditions, Latively prescribed, are also found." [1] Although frustratingly the vocabuher varies from county to county and althe ultimate arbiter of intended seaning is the local legislative user of the extested words, the Court of Appeals in

the terms "permit" and "exception" in-

blesome or y establish Parsonnenon herein being discussed:

a separate vitality of its own. hich admi: The words 'special exception' are well The process of evolution or differentiaaditions or of Zoning ct, at SI spec:x

which explained:

special use permits' would be more known as the "Use Permit" for off-street ecurate. The theory is that certain uses, parking in a residential zone.

considered by the local legislative body to be essential or desirable for the welfare of the community and its citizenry or substantial segments of it, are entirely appropriate and not essentially incompatible with the basic uses in any zone . . . but not at every or any location therein or without restrictions or condi-

tions being imposed If the board finds compliance with the standard or requisites set forth in the ordinance. the right to the exception exists, subject to such specific safeguarding conditions as the agency may impose . . . "

Thus, the broad phenomenon does have, Briville Fuel & Feed Co. v. Board of Ap- here as elsewhere, many labels. Whether 27 Md. 183, 187-188, 262 A.2d 499, the label employed on a particular occasion Paregnized generally that "conditional use" happens to be "special permit," "conditional "special exception" are synonymous use," "special use," "use permit," or "special In a 1954 decision arising out of exception," the type of relief described is Limore C. nty, Oursler v. Board of Zon- the same. This broad phenomenon is what La Appeals of Baltimore County, 204 Md. we shall refer to as the genus. Generally 27, 104 A.2d 568, the Court of Appeals did speaking, the name "Special Exceptions"

brekangeably. Although, to be sure, deal- What remains to be seen is how the name with zoning regulations and, therefore, "Special Exceptions" came to take on a vocabulary emanating from Prince more limited and specific meaning in the Gorge's County rather than from Balti- zoning experience of Baltimore County. As County, the Court of Appeals in Ca- we shall see, however, that additional and Nanna, 243 Md. 536, 543, 221 A.2d narrower meaning was not in lieu of, but 707, defined the phrase "Special Excep- rather in addition to, the broader and more in terms of the Broad and general general meaning, which continued to enjoy

frown in zoning law. They refer to a tion, linguistically as well as biologically, is Frant by the zoning administrative body easy to understand. The genus initially pursuant to the existing provisions of the was a simple and undifferentiated life form scing law and subject to certain guides (or zoning phenomenon). Over the years, and standards, of a special use permitted however, certain specific instances of the saler the provisions of the existing zonas having some unique identifying charac-Montgomery County v. Merlands teristics, some unique problems, and some Inc., 202 Md. 279, 287, 96 A.2d 261. unique guidelines of their own. As these Cheem v. Nanna cited as authority the New ascertainable instances of the more general decision of Tullo v. Township of Mill- phenomenon were singled out for separate 54 N.J.Super. 483, 149 A.2d 620, 624- handling, they came to be identified as distinct species within the broader genus. The term ['special exception'] might well This was particularly true of that instance be said to be a misnomer. 'Special uses' of "Special Exceptions" which came to be 373 ATLANTIC REPORTER, 2d SERIES

Zoning regulations were first adopted by Commissioners excised from the old § XIII the County Commissioners of Baltimore the provisions dealing with off-street park-County on January 2, 1945, pursuant to a ing in a residential zone and housed them in special enabling act, adopted by the Mary- § 409.4 of the Baltimore County Zoning land Legislature in the Acts of 1941, Ch. Regulations. Several other conditional uses 247. The County Commissioners were au- or "Special Exceptions," which also had takthorized to appoint a Zoning Commissioner en on distinct identities and involved disand a Board of Zoning Appeals to hear and tinct guidelines and regulations, were also determine issues raised pursuant to the reg- lodged in Art. 4 of the BCZR which was ulations. Among his other powers, the Zon- entitled "Special Regulations." The reing Commissioner was empowered to make mainder of the "Special Exceptions," which Special Exceptions and to issue Special Per- were not singled out for special handling. mits within appropriate guidelines. The were treated in § 502, called "Special Ex-Code of Public Local Laws of Baltimore ceptions." (It would have been preferable, County (1948), Title 23, § 367 established of course, if § 502 had been entitled "Other § XIII of the Zoning Regulations, entitled Special Exceptions.") The differentiation "Powers Relative to Special Exceptions and proceeded further when § 500, listing the Special Permits."

and Restrictions for Baltimore County (Do- off-street parking) in subsection 500.4, but ing Ed., 1948), indicated the still-loose inter- then listed his power to deal with "Special changeability of the terms "special excep- Exceptions" under § 502 in a separate subtion" and "special permit," on the one hand, section, 500.2. We may thus perceive, as but also began the process of differentia- other conditional uses begin to take on seption between them, on the other hand. Al- arate identities and branch off from the though the term "special exception" is con- main stem, the emergence of a distinct spetained in the title, the text of the section cies "Special Exceptions," including in its nowhere employs it but uses only the term ranks the remainder of the conditional uses "special permit." Indeed, § XIII's pream- which have not taken on distinct identities. ble provides that ". . . such uses may The species "Special Exceptions" is now a be permitted only upon a special permit part of the genus "Special Exceptions." granted by the zoning commissioner, sub- Therein is the heart of the problem. The ject to appeal . . . " it appears that same name now refers 1) to the whole and the Special Permit authorized the Special 2) to a part of the whole. Use, the total effect of which could be Notwithstanding this differentiation be-

ment: "In any residential zone a special treatment quite clear: permit shall be required for use of land for automobile parking, subject to the following regulations."

ther in 1955 when the Baltimore County 7. We do not agree that § 502 need be complied

with in order to obtain a use permit for off-

powers of the Zoning Commissioner, listed That § XIII of the Zoning Regulations his power to issue a use permit (such as for

described as a Special Exception. In terms tween the species, we think it preeminently of the beginning of differentiation, subsec- clear that the singling out of certain condition A treats generally the special permits tional uses for special treatment in Art. 4 of that shall be required for a list of designat- the BCZR did not in any fashion denigrate ed uses in a residential zone. It does not from their credentials as members in coninclude off-street parking. It is rather in a tinued good standing of the genus "Special separate section, subsection C, that off- Exceptions." Art. 4, in its Statement of street parking receives its separate treat- Purpose, makes the reason for the distinct

"Certain uses, whether permitted as of right or by special exception, have singular, individual characteristics which make The process of differentiation went fur- it necessary, in the public interest, to specify regulations in greater detail than street parking which is governed exclusively by

would be feasible regulations for eaor districts. This vides such regulat plied)

Indeed, various of uses singled out for the genus "Special representative list restaurant use" is " 🗎 🕿 🗷 Special Exceptio Special Exception."); mitted as of right tion.").

The Baltimore Cou granted power to the by § 34-11. It refe "special exceptions" It explicitly confirms Zoning Commissione those things which h The distinction bet

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HOFMEISTER v. FRANK REALTY CO. Md. 279

Cite as 373 A.2d 273 would be feasible in the individual use course of holding that § 500.12 was not a regulations for each or any of the zones bar to the granting of the Use Permit for or districts. This article, therefore, pro- off-street parking, the Court of Appeals vides such regulations." (Emphasis sup- found, of necessity, that such a Use Permit was not a "Special Exception." The Court Indeed, various of the special conditional reasoned, at 218 Md. 357, 146 A.2d 877:

"This then brings us to the question as uses singled out for individual treatment in to whether or not the petition filed in this Art. 4 explicitly retain their membership in case is a petition for a special exception the genus "Special Exceptions." A mere from the use that can be made of land representative list includes § 402.3 (The lying in a zone classified as R. 6 Residenconversion of a residence "for tearoom or tial. We must conclude that this petition restaurant use" is "a Special Exception."); is not a request for a special exception. § 402B ("Ar antique shop may be permitted It is quite true that the zoning ordinance as a Special Exception."); § 402C ("A residoes provide that under certain circumdential art salon may be permitted as a stances and for certain purposes which Special Exception."); § 405.2 ("Locations in are enumerated at length a different use which automotive-service stations are permay be made of the land than that which mitted as of right and by special excepthe zoning ordinance contemplates. Section 270 sets out this Schedule of Special Baltimore County adopted a charter form Exceptions in detail and Sections 502 and of government as of December 6, 1956. 502.1 set forth the principles and condi-The Baltimore County Code, 1958 Ed., tions which shall govern the Zoning Comgranted power to the Zoning Commissioner

missioner and the Board. Off-street parking is not mentioned among the many things which may be the subject of a special exception and the power to determine what situations shall be considered in that category is a legislative function, resting in this instance with the County Council of Baltimore County, and is not an administrative function of the Zoning Commissioner. The function of the Zoning Commissioner is limited to a determination under the existing factual situation if a special exception, one among those listed in the ordinance, is appropriate in any particular case."

(Emphasis supplied) Md. 351, 146 A.2d 875, in 1958. There, a There was now established, at least in requested permit for off-street parking was terms of surface appearance, a seemingly initially denied for what turned out to be an unbridgeable dichotomy between a "Special erroneous reason. The request was prompt- Use Permit" for off-street parking in a ly resubmitted and was granted by the residential zone under § 409.4 of the BCZR Board of Zoning Appeals and the grant was and a "Special Exception" under §§ 500.12 affirmed by the Circuit Court for Paltimore and 502 of the BCZR. This was to become County. The protestants there claimed the appellants' minor premise: A "Use Per-- that under the provisions of § 500.12 of the mit" is not a "Special Exception." The BCZR, a request for a Special Exception, major premise was established two years once denied, could not be entertained again later with the passage by the Baltimore until the expiration of 18 months. In the County Council of Bill No. 80, limiting for

373 ATLANTIC REPORTER, 2d SERIES

presently pertinent purposes the power of the Zoning Commissioner to the granting of "Special Exceptions." The predicate was now laid for the appellants' present syllogism, which is:

The delegated authority is to grant all "Special Exceptions." (Sect. 22-23 BCZR) To grant a "Use Permit" is not

to grant a "Special Exception." Therefore, to grant a "Use Permit" is not the delegated au-

The validity of the syllogism appears irrefutable. Noretheless, we reject it as in alid. In terms of formal logic, it fails because there is no universal middle term (although there appears to be). The reason is that, although the words are the same, the term "Special Exception" does not mean the same thing in the major premise that it means in the minor premise. The term "B" has shifted its meaning in the course of the

It is clear to us that the Court of Appeals in Marek was distinguishing the Species "Special Use Permit for Off-Street Parking" (governed by the rules of § 409.4) from the Species "Special Exceptions" (meaning the remainder of the special exceptions which are controlled by the rules of §§ 502 and 500.12, establishing the 18-month limitation for repetitioning purposes). The Court was by no means indicating that the Species "Special Use Permit for Off-Street Parking" was no longer a part of the Genus "Special Exceptions" (encompassing all conditional uses no matter what their labels, what their separate identities and what their special regulatory provisions might be). Indeed, no such problem was before it and it had no occasion even to consider the question. The distinction was only between two species within the same genus and not the logic of the appellants, but not yet to between a species and its parent genus. establish the counter-logic of the appellee. Indeed, we think the Court of Appeals was For that purpose, we must look to the still giving the term its specific meaning meaning of the term "B" as employed in when in Jacobs v. County Board of Appeals the major premise, which is to say we must for Baltimore County, 234 Md. 242, 198 A 2d look to the meaning of the phrase "Special

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"[W]e held in Marek, supra, that the t'-Permits granted under Section 409.4 d.4 not constitute 'special exceptions'

Quite clearly, the Court of Appeals did not Als all B. mean to exempt the granting of Use Permits for off-street parking from the delegated powers of the Zoning Commissioner and County Board of Appeals, for in the Jacobs case itself, the Court affirmed the actions of the Zoning Commissioner and the County Board of Appeals in granting just such a Use Permit for off-street parking. That was four years after the Baltimore County Council had rearticulated the delegation of power, granting only, for presently pertinent purposes, the power to make Special Exceptions." In Bloede v. Mac-Nabb, 231 Md. 452, 190 A.2d 780, the Court of Appeals had also dealt with the granting of a "Use Permit" for off-street parking in a residential area by the Baltimore County Board of Appeals. It there said explicitly, at 231 Md. 454, 190 A.2d at 781:

"Section 409.4a of the Baltimore County zoning regulations authorizes the zoning commissioner to issue a permit for the use of land in a residential zone for a parking area"

Because as used in §§ 502 and 500.12 and by the Court of Appeals in Marek and Jacobs. the term "Special Exceptions" is given only its narrower and more specific meaning, the premises for the appellants' syllogism be-

C is not some-B.

From those premises, it cannot be established validly whether "C" (the granting of a "Use Permit" for off-street parking) is or is not "A" (within the power designated to the Zoning Commissioner).

900, it said in 1964, at 234 Md. 248, 198 A.2d Exceptions" as used by the Baltimore County Council in repealing and reenacting the

To have established this much is to refute

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Bill No. 80 of rewrite the su County zoning l: reorganize and e provisions that : 15 years of grow ... out the Baltime · § 4 of Bill No. short title would Zoning Reorga supplied) Ever County Council Commissioner a peals to continu the same auth been theirs and authority. Bill the Baltimore (ning, Zoning ar

> in the case of any conflict between such Montgomery County Council, 244 Md. 98, regulations and the provisions of this Act, 102, 223 A.2d 181; Height v. State, 225 Md.

these provisions shall control." Above and beyond the short title, the title 399, 401, 18 A.2d 587.

authority of the Zoning Commissioner to bothom, supra, at 187 Md. 132-133, at 48 grant Use Permits for off-street parking. A.2d 763: It is well established that legislative intent ". . . where the language of a stattitle or preamble as well as its terms. Board of County Commissioners v. Colgan, 274 Md. 193, 200 201, 334 A.2d 89; Mass Transit Adm. v. Balto. Co. Rev. Authority, ing the judicial construction of the stat-

HOFMEISTER v. FRANK REALTY CO.

Cite as 373 A.2d 273 grant of authority to the Zoning Commis- 267 Md. 687, 695-696, 298 A.2d 413; Shipley moner and the County Board of Appeals in v. State, 201 Md. 96, 103, 93 A.2d 67. [3] It is asserted by the appellee and

[2] It is clear to us that County Council conceded by the appellants that the settled Bill No. 80 of 1960 was intended not to usage in Baltimore County, even post-1960. rewrite the substance of the Baltimore is for the Zoning Commissioner to grant County zoning law but only to consolidate, "Use Permits" for off-street parking in resreorganize and edit the planning and zoning idential zones (or, as the case may be, to provisions that as of that time, after some refuse the grant but in any event, to con-15 years of growth, were scattered through- sider the question). Both Jacobs v. Countr out the Baltimore County Code. Indeed. Board of Appeals, supra, and Bloede v. " 4 of Bill No. 80 itself provided that its MacNabb, supra, are evidence of this pracshort title would be "The 1960 Planning and tice. Administrative interpretations con-Zoning Reorganization Bill." (Emphasis temporaneous with the passage of a statute supplied) Every indication is that the have been considered strong evidence on County Council fully intended the Zoning the question of its best construction. Smith Commissioner and the County Board of Ap- v. Higinbothom, 187 Md. 115, 48 A.2d 754. peals to continue to enjoy and to exercise We think it preeminently clear that the the same authority that had theretofore Baltimore County Council did not intend to been theirs under the predecessor grant of erode the power of the Zoning Commissionauthority. Bill No. 80 created Title 23 of er to continue to do those things which he the Baltimore County Code entitled "Plan- had been doing since the advent of zoning ning, Zoning and Subdivision Control" and regulations in that county. "When a word specifically provided in § 23-25 thereof: in a statute is not clear, the courts will seek "The zoning regulations adopted by the legislative intent in the language of the Baltimore County on March 30, 1955, as statute by considering the object to be acamended on the effective date of this complished and adopt the meaning which Act, are hereby declared to be in full will harmonize therewith in carrying out force and effect provided, however, that the purpose of the statute." Walker v.

251, 170 A.2d 212; Powell v. State, 179 Md. of Bill No. 80 confirms the intent of the We find further evidence of both the County Council "to reorganize and consoli- original legislative intent and the continued date the functions of planning, zoning and and settled usage in the county from the subdivision control in Baltimore County and fact that, again post-1960, subsequent edito define the duties, powers, responsibilities, tions of the BCZR in 1963, in 1969 and in qualifications and manner of appointment 1975 have continued to include § 409.4 of various zoning officials includ- which explicitly authorizes the Zoning Coming the Zoning Commissioner. There is no missioner to grant "Use Permits" for offindication in the title or the preamble that street parking in residential zones. Pertithe Council sought to repeal any of the nent here are the words of Smith v. Higin-

may be discerned by examining a statute's ute is susceptible of two constructions, a long-continued and unvarying construction applied by administrative officials is strong persuasive influence in determin-

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See also Rogan v. P & O. R.R. Co., 188 Md. syllogism becomes: 41, 53, 52 A 2d 261; American-Steward Dis- The delegated authority is to A is all B.

tillery v. Stewart Distilling Co., 168 Md. 212, 177 A 2d 473.

We are persuaded overwhelmingly that in the enabling act of 1960, the Baltimore County Council intended to give the phrase "Special Exceptions" its broad and generic meaning. It used it broadly even as the Q. E. D. Court of Appeals had defined it in Heath v. Mayor and City Council, 187 Md. 296, 303, 49 A.2d 799, 803, as:

. . a dispensation permissible where the Board of Zoning Appeals finds the Zoning Commissioner will, therefore, be existing those facts and circum tances and is hereby affirmed. specified in the ordinance as sufficient to warrant a deviation from the general

In just such a sense did Judge Davidson define the term for this Court in Anderson v. Sawyer, 23 Md.App. 612, 617, 329 A.2d 716. 720: "The conditional use or special excep-

tion is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the gener- who was injured when lumber carrier ran al purpose and intent of the plan." (Em- over his foot, the Superior Court of Baltiphasis supplied)

ute, and it should not be disregarded ex- Council in 1960 used the term "Special Except for the strongest and most urgent ception" in its broad and generic sense. With this new minor premise, the ultimate

grant all "Special Exceptions."

To grant a "Use Permit" is to Cis some - B. grant a "Special Exception." Therefore, to grant a "Use Per- ... Cis A.

mit" is the delegated author-

This conclusion is irrefutably valid. The action of the Baltimore County Circuit Court affirming the dec' on of the County Board of Appeals affirming the decision of

JUDGMENT AFFIRMED: COSTS TO BE PAID BY APPELLANTS.



36 Md.App. 82 LUMBER TERMINALS. INCORPORATED

Edward Alphonse NOWAKOWSKI et al. No. 874.

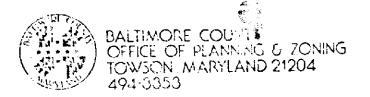
Court of Special Appeals of Maryland. May 13, 1977.

In a personal injury action by stevedore more County, James W. Murphy, J., ren-[4] It is beyond cavil that the granting dered judgment for plaintiff and defendant of a "Use Permit" for off-street parking in appealed. The Court of Special Appeals. a residential zone under the provisions of Lowe, J., held that (1) evidence supported § 409.4 falls within this broad definition of finding as to liability; (2) instructions were "Special Exception." The Species "Use adequate; (3) evidence presented jury ques-Permit" is indisputably a member of the tion as to disability; (4) evidence of present Genus "Special Exception." It is also indis- value of lost future earnings was not necesputably clear that the Baltimore County sary to support economict's testimony; (5)

Art I explicitly reta conversion of a resi § 402B ("An antique dential art salon m `which automotive-se Baltimore County of government as .

I XIII of the Zoning more County, as add and as amended Nov for off-street parking under § 409.4, on th "special exception." o distinction on which build their present made by the Court o Baltimore County B Md. 351, 146 A.2d 8' requested permit for initially denied for wh erroneous reason. Th hy resubmitted and Board of Zoning Appl affirmed by the Circu County. The prote that under the provis BCZR, a request for

SEP 2.9 1930



WILLIAM F HAMMOND ZONING COMMISSIONER

June 6, 1980

Julius W. Lichter, Esquire Steinberg, Lichter, Coleman & Rogers 305 West Chesapeake Avenue Towson, Maryland 21204

> RE: Petitions for Variances and Special Hearing

NW/corner of Joppa Road and Lackawanna Avenue - 9th Election District Sarandos Macris, et ux - Petitioners NO. 80-150-ASPH (Item No. 69)

Dear Mr. Lichter:

I have this date passed my Order in the above referenced matter in accordance with the attached.

Very truly yours,

WILLIAM E. HAMMOND Zoning Commissioner

WEH/srl

Attachments

cc: Mr. Russell Kness 8745 Lackawanna Avenue Baltimore, Maryland 21234

> Mr. Robert E. Kelly 8743 Lackawanna Avenue Baltimore, Maryland 21234

> Mr. Andrew D. Martino 9724 Lackawanna Avenue Baltimore, Maryland 21234

John W. Hessian, III, Esquire People's Counsel

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Qten # 69

THE LAW OFFICES OF

STEINBERG, LICHTER, COLEMAN & ROGERS

305 W. CHESAPEAKE AVENUE, TOWSON, MD. 21204 (301) 321-0600

MELVIN A. STEINBERG JULIUS W. LICHTER. EDWARD L. COLEMAN DONALD F. ROGERS

December 11, 1979

IN REPLY REFER TO:

Mr. Nicholas B. Commodari Baltimore County Office of Planning and Zoning County Office Building Towson, Maryland 21204

Application of Sarandos and Eva Macris Property: Joppa Road at intersection with Lackawanna Avenue, Item No. 69

Dear Mr. Commodari:

As per our several conversations regarding the above mentioned item, I would appreciate your obtaining the comments necessary for scheduling the above matter for a hearing at the earliest possible date. Approximately three months have passed since the petition was filed and a date has not been set as of this time.

Prior to the time of the hearing, I will review the matter of parking requirements with my client and will advise you accordingly. Meanwhile, I feel that a hearing should be set and that all open issues should be promptly resolved.

Very truly yours,

Julius W. Lichter

JWL:lsp

cc: Mr. and Mrs. Sarandos Macris

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BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204

Your Petition has been received this	19 3.*
Filing Fee \$	Received: Check
	Cash
(6)	Other
	The Est
	William E. Hammond, Zoning Commissioner
Petitioner S. An and the Man	Submitted by
Petitioner's Attorney of form 1977	
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*This is not to be interpreted as acceptance of the Petition for assignment of a hearing date.

COLUMBIA OFFICE WALTER PARK Registered Surveyor PHONE 730-9060

AT 9:45 A.M.

permit a rear yard setback of 0 feet in lieu of the required 30

feet and to allow 13 parking

spaces in lieu of the required 25 spaces and Special Hearing under Section 500.7 of the

Zoning Regulations of Baltimore County, to determine whether or not the Zoning

Commissioner and/or Deputy Zoning Commissioner should

approve an access drive within a parcel of property zoned D.R.

Section 238.2 · side and rear

Section 409.2 Parking space All that parcel of land in the Ninth District of Baltimore

Beginning for the same at a point on the west side of Lackawanna Avenue (40 feet

wide said point being distant from the point formed by the

intersection of the center of

Lackswanna Avenue with the

center of Joppa road and two

following courses and distances viz: (1) North 20 degrees 55 minutes 45 seconds West 61

feet and (2) South 69 degrees 04 minutes 15 seconds West 20 feet thence North 20 degrees 55

minutes 45 seconds West 152 feet thence South 69 degrees 04 minutes 15 seconds West 84.03

feet thence South 26 degrees 22 minutes 45 seconds East 179 feet thence North 68 degrees 30 minutes 20 seconds East 42.17 feet thence North 23 degrees 46 minutes 17 seconds East 35.53 feet to the place of beginning. Containing 0.31 acres of land

Being the property of Sarandos (Sam) Macris, et ux, as shown on plat plan filed with the Zoning Department. Hearing Date: Tuesday, February 12, 1980, at 9:45 a.m. Public Hearing: Room 106,

County Office Building, 111 W. Chesapeake Avenue, Towson,

BYORDEROF

more or less.

excepted as follows:

yard setbacks.

The Zoning Regulation to be

Date & Time:

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A Committee to be a second

Paradia Company

TOWSON OFFICE HUDKINS ASSOCIATES, INC. Engineers, Surveyors and Landscape Architects 200 EAST JOPPA ROAD ROOM 101, SHELL BUILDING TOWSON, MARYLAND 21204

PHONE: 828-9060

BEL AIR OFFICE L. GERALD WOLFF Landscape Architect PHONE 838-0888

September €, 1979

DESCRIPTION TO ACCOMPANY APPLICATION FOR REAR YARD VARIANCE:

Beginning for the same at a point on the west side of Lackawanna Avenue (40 feet wide) said point being distant from the point formed by the intersection of the center of Lackawanna Avenue with the center of Joppa Road the two following courses and distances viz: (1) North 20 degrees 55 minutes 45 seconds West 61 feet and (2) South 69 degrees 04 minutes 15 seconds West 20 feet thence North 20 degrees 55 minutes 45 seconds West 152 feet thence South 69 degrees 04 minutes 15 seconds West 84.03 feet thence South 26 degrees 22 minutes 45 seconds East 179 feet thence North 68 degrees 30 minutes 20 seconds East 42.17 feet thence North 23 degrees 46 minutes 17 seconds East 35.53 feet to the place of beginning. Containing 0.31 Acres of land more or less.

> Malcolm E. Hudkins Registered Surveyor #5095

> > William Book

PETITION FOR VARIANCE AND SPECIAL HEARING	THE		ALGE	
• 9th District		T-1 41- 364	4 1 0	2 V .
Zoning: Petition for Variance for rear yard setback and		Bel Air, Md.,	·	

parking and Special Hearing for an access drive. This is to Certify, That the annexed Location: Northwest corner of Joppa Road and Lackawanna letit. TUESDAY, FEBRUARY 12, 1980 Macan Public Hearing: Room 106, County Office Building, 111 W. Cheaspeake Avenue, Towson, Maryland was inserted in THE AMIS, a newspaper printed The Zoning Commissioner of and published in Harford County, once in each Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing. Petition for Variances to

and the second of the second o BALTIMORE COUNTY, MARYLAND and the same of th OFFICE OF FINANCE REVENUE DIVISION No. 85579 MISCELLANE(CASH RECEIPT DATE January 10, 1980 ACCOUNT 91-662 AMOUNT \$25.00 FROM: Julius W. Lichter, Esquire FOR: Filing Fee for Case No. 80-150-ASPH VALIDATION OR SIGNATURE OF CASHIER

130-150-15184

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryl	and
Distríct.	Date of Posting 1/28/80
Posted for: le letter for Variance &	Special Clarence
Petitioner: Barardon (Sam) 773	to Carlo Jak Lyk
Location of property: NW/6 & Carpente	
Location of Signs: 40-1900 A Secretary	Loxing Jazza and
Posted by Signature	Date of return: 3/1/50
acaro	

WILLIAM E. HAMMOND Zoning Commissioner of Baltimore County

SEP 29 1990